Supreme Court, U.S.
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In The

Supreme Court Of The United States

GLENN R. WAITE,

Petitioner,

v.

ANNE HIPPE, et al.,

Respondents.

ON PETITION FOR WRIT OF CERTIORARI
TO THE NEBRASKA COURT OF APPEALS

PETITION FOR WRIT OF CERTIORARI WITH APPENDIX

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QUESTIONS PRESENTED

1) When a State legislature by enacting a statute grants a person a liberty interest to amend a pleading, does the Due Process Clause require that the State court provide a notice and opportunity for a hearing at a meaningful time such as after a demurrer has been sustained and before the action is dismissed?

2) Are the pleadings alleging a federal claim for relief a nullity when the parties and controversy are properly before the State court and when the plaintiff has alleged the two elements necessary to state a cause of action under 42 USC 1983 and has a property or liberty interest protected by the U.S. Constitution?

3) Are all matters and issues in this 42 USC 1983 action barred by res judicata or collateral estoppel including the federal questions involved in this case?

LIST OF ALL PARTIES

Appellant:

Glenn R. Waite, individually, and as personal representative of Harriet I. Waite, deceased

Appellees:

Anne Hippe
Robert O. Hippe
Paul D. Empson
Alfred J. Kortum
Alan G. Gless
W. Scott Carpenter, M.D.
Regional West Medical Center,
Scottsbluff Internal Medicine Group
Mark E. Novotny
Robert P. Chaloupka
James A. Snowden
Armando J. Mangana, M.D.
William M. Packard, M.D.
Terry Mark Himes, D.O.
Larry O'Holleran, M.D.

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PETITION FOR A WRIT OF CERTIORARI

Petitioner, Glenn R. Waite, most respectively requests this most Honorable Court to issue a writ of certiorari to review the judgments of the Nebraska Court of Appeals.

OPINIONS AND ORDERS

Order dated January 14, 2004

Order dated September 22, 2003

Orders dated April 16, 2003

Final Order dated November 1, 2002

Order and Judgment of Dismissal dated July 3, 2000

STATEMENT OF THE BASIS OF JURISDICTION

The judgment(s) or order(s) sought to be reviewed was filed April 16, 2003 (App. 1). The Order respecting rehearing was filed on September 22, 2003 (App. 13). The Order overruling a petition for further review by the Nebraska Supreme Court was filed January 14, 2004 (App. 14). This Court has jurisdiction under Title 28 U.S.C. section 1257 to review a final judgment of the highest court a state which determines a Title 42 U.S.C. section 1983 action. This Court has jurisdiction to consider all of the substantive federal questions determined in the earlier stages of the litigation even if the Petitioner did not apply for a writ of certiorari within 90 days after the first judgment by the highest court of the state.

CONSTITUTIONAL PROVISIONS, TREATIES, STATUTES, ORDINANCES AND REGULATIONS

Article VI, clause 2, of the U.S. Constitution states:

"This Constitution and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding."

Article XIV in addition to, and amendment of, the U.S. Constitution states:

"Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

42 U.S.C. section 1983 states:

"Every person who, under the color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States, or other person within the

jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress, except that in any action brought against a judicial officer for an act or omission taken in such brought against a judicial officer for an act or omission taken in such officer's judicial capacity, injunctive relief shall not be granted unless a declaratory decree was violated or declaratory relief was unavailable. For the purpose of this section, any Act of Congress applicable exclusively to the District of Columbia shall be considered to be a statute of the District of Columbia."

Neb. Rev. Stat. section 7-110 states:

"**Parties acting in their own behalf.** Plaintiffs shall have the liberty of prosecuting, and defendants shall have the liberty of defending, in their proper persons."

Neb. Rev. Stat. section 30-24,106 states:

"**Distribution; right or title of distributee.** Proof that a distributee has received an instrument or deed of distribution of assets in kind, or payment in distribution, from the personal representative is conclusive evidence that the distributee has succeeded to the interest of the estate in the distributed assets, as against all persons interested in the estate, except that the personal representative may recover the assets or their value if the distribution was improper."

Neb. Rev. Stat. section 25-854 states:

"**Demurrer sustained; amendment allowed.** If the demurrer is sustained, the adverse party may amend, if the defects can be remedied by amendment, with or without costs, as the court in its discretion may direct.

Neb. Rev. Stat. section 30-2476(21) states:

"30-2476. Transactions authorized for personal representatives; exceptions. Except as restricted or other wise provided by the will or by an order as a formal proceeding and subject to the priorities stated in section 30-24,100, a personal representative, acting reasonably for the benefit of interested persons, may properly:

(21) employ persons, including attorneys, auditors, investments advisors, or agents, even if they are associated with the personal representative, to advise and assist the personal representative in the performance of his or her administrative duties; act without independent investigation upon their recommendations; and instead of acting personally, employ one or more agents to perform any act of administration, whether or not discretionary;"

STATEMENT OF THE CASE

This is Title 42 U.S.C. section 1983 action by Petitioner (App.25-47) claiming that Anne Hippe and others acted under color of state law to deprive Petitioner of his liberty and property interests protected by the U.S. Constitution. The federal questions are whether the pleadings alleging a deprivation of the federal rights of the Petitioner are as a matter of law a nullity and whether all matters and issues (including federal questions) are barred by res judicata.

Facts material to questions presented: Glenn R. Waite did not receive his Due Process notice prior to dismissal informing him that the court had sustained the demurrers (App. 17-18). Glenn R. Waite alleges, in his fourth amended petition, that he was deprived of his liberty interest, as guaranteed by the 14th Amendment, to an impartial hearing on September 3, 1991, October 28, 1991, October 29, 1993, August 29, 1996, October 3, 1996, and July 31, 1997 because (1) Anne Hippe acted jointly with a nursing student to damage the decedent and her husband Judge Hippe [or a judge who he and his wife acted jointly under color of state law with] decided the cases against Glenn R. Waite (App. 30-33), (2) attorney James Snowden, who represented Regional West Medical Center, had a secret meeting on October 28, 1991 without prior notice to Glenn R. Waite (App. 37), and (3) Judge Gless dismissed case 44590 without prior notice to Glenn R. Waite (App. 33). It was Glenn R. Waite's rights [liberty interest to appear pro se pursuant to Neb. Rev. Stat. 7-110 and liberty interest to employ an attorney pursuant to Neb. Rev. Stat. 30-2476(21)] that were the focus of the September 3, 1991 hearing (App. 52-57). Glenn R. Waite alleges that he has a protected property interest because the second cause of action in case 38269 was his own personal cause of action (App. 33) and he has property rights under

Nebraska law because all heirs and any other persons or entities, other than himself, have renounced all rights to the decedent's assets, the county court of Sheridan County, Nebraska, approved the distributions made by the personal representative, and, pursuant to Neb. Rev. Stat. section 30-24,106, Glenn R. Waite is the person who has succeeded to the rights of the "chose(s) in action" which was distributed to him (App. 58). An intervening decision on May 15, 1996 between the first judgment [cases 38267, 38268, 38269, 38271, 38279, September 5, 1991] and the second action [case no. CI99-590 filed August 25, 1999] created an altered situation (App. 12).

Federal questions raised and their disposal in state court: A fourth amended petition was filed in March 2000 and alleged that Anne Hippe and others acted under color of state law with a State Official and caused the plaintiff to be deprived of his federal rights (App. 25-47). All the defendants except for Regional West Medical Center, Robert P. Chaloupka, and James A. Snowden filed demurrers asking the court to sustain their demurrers claiming that the federal questions are barred by res judicata or collateral estoppel (Record Below, Demurrers of Carpenter, et. al., Regional West Medical Center, et. al., and R. Hippe. et. al., App. 48-49). The district court sustained the demurrers on various grounds (App. 4-7). A timely notice of appeal was filed (record below). The Court of Appeals on its own motion without any prior notice to Waite dismissed the first appeal for lack of jurisdiction (App. 9). Waite did not receive any notice of the Court of Appeals' order until after 30 days had expired in which to file a Petition for Further Review. Petitioner then filed a motion claiming that the U.S. Constitution entitled him to a notice and opportunity for a hearing after the court sustains a demurrer and prior to dismissal (App. 17-18). This claim was disposed of on November 1, 2002 (App. 4-5). A timely appeal was taken to the

Nebraska Supreme Court (App. 23-24) pursuant to Neb. Rev. Stat. 24-1107. The Appellees filed motions for summary affirmance claiming that the federal questions presented for review are so unsubstantial as not to require argument in that, based on Waite v. Carpenter, 1 Neb.App.321, and Waite v. Carpenter, 3 Neb.App.879, the pleadings filed in this 42 USC 1983 action are, and continue to be, a nullity (App. 15-16, record below). On April 16, 2003, the Court of Appeals sustained the Appellees' motions for summary affirmance (App. 1-3). On April 29, 2003, Petitioner filed a motion for rehearing (record below) asking the Court of Appeals to reconsider its decision because the court incorrectly decided the federal questions. On September 22, 2003, the Court of Appeals disposed of this federal claim by overruling the motion for rehearing (App. 10). On October 15, 2003, Petitioner filed a Petition for Further Review and this was overruled on January 14, 2004 (App.11).

REASONS FOR GRANTING THE WRIT

The United States Supreme Court should ultimately decide whether or not pleadings alleging a federal claim for relief are a nullity and whether or not the pleadings on their face show that all matters and issues including the federal questions are barred by res judicata because a State court may be construing the pleadings in a manner so as to deny a federal right when the parties and controversy are properly before it thus discriminating against a federal claim for relief.

On April 16, 2003, the Nebraska Court of Appeals granted (App. 1-3) the Appellees' motions for summary

affirmance (App.13-16) thus determining that the federal questions (App. 50-51) presented for review are so unsubstantial as to not require argument because the pleadings are a nullity and that all matters and issues including the federal questions presented for review are barred by the doctrine of res judicata.

In Staub v. Baxley, 355 U.S. 313, 2 L.Ed.2d 302, 78 S.Ct. 277 (1958), this Court held that whether a pleading sets up a sufficient right of action or defense, grounded in the Constitution or law of the United States, is necessarily a question of federal law; and where a case coming from a state court presents that question, the United States Supreme Court must determine for itself the sufficiency of the allegations and is not concluded by the view taken of them by the state court. This Court held in Gomez v. Toledo, 446 U.S. 635, 64 L.Ed.2d 572, 100 S.Ct. 1920 (1980), that by 1983's plain terms, the plaintiff is required to make only two allegations in order to state a cause of action under the statute: (1) that some person deprived him of a federal right, and (2) that such person acted under color of state or territorial law.

The Court of Appeals in Waite v. Carpenter, 1 Neb.App. 321, 496 N.W.2d 1 (Neb.App. 1992) and Waite v. Carpenter, 3 Neb.App. 879, 533 N.W.2d 917 (Neb.App.1995) determined that Glenn R. Waite is not the sole heir of the decedent's estate and therefore the pro se pleadings alleging survival actions and a wrongful death action are a nullity and because those pleadings are a nullity, then it reasoned that the pleadings in this 42 USC 1983 action are also a nullity. However, as stated in Gomez v. Toledo, 446 U.S. 635, the plaintiff has to make only two allegations to state a cause of action pursuant to 42 USC 1983. The fact that the Court of Appeals previously determined that Glenn R. Waite is not the sole heir of the decedent's estate cannot affect the issue of whether the 42 USC 1983 pleadings are a nullity because there

is no prior determination by the Court of Appeals or any other court that Glenn R. Waite does not have any liberty or property interest whatsoever protected by the U.S. Constitution, it merely determined that Glenn R. Waite is not the only heir of the decedent's estate.

The fourth amended petition states that Glenn R. Waite had a liberty interest, as guaranteed by the 14th Amendment, to an impartial hearing on September 3, 1991, October 28, 1991, October 29, 1993, August 29, 1996, October 3, 1996, and July 31, 1997 (App. 30, 33, 37). It also states that Glenn R. Waite has a property interest, pursuant to Neb. Rev. Stat. section 30-24,106, because he is the person who has succeeded to the rights of the "chose(s) in action" which was distributed to him (App. 58). Since the 42 USC 1983 pleadings are not a nullity because Glenn R. Waite does have a liberty or property interest protected by the U.S. Constitution, the next issue is whether this 42 USC 1983 action is barred by res judicata or collateral estoppel. In determining the preclusive effect of a prior state judgment in a subsequent suit alleging a federal claim for relief, this Court applies the rules chosen by the State from which the judgment is taken subject to the requirements of the Due Process Clause. See Marrese v. Amer. Acad. Ortho. Surgeons, 470 U.S. 373, 380, 84 L.Ed.2d 274, 105 S.Ct. 1327 (1985).

The first rule chosen by the State court is that Res Judicata is an affirmative defense, and it is only when it affirmatively appears to exist from the petition itself that it affords a basis for sustaining a general demurrer. See Card v. Card, 174 Neb. 124, 116 N.W.2d 21 (1962). The issue of res judicata or collateral estoppel was raised by demurrer (record below, demurrers of Carpenter, Regional West, App. 48-49).

The second rule chosen by the State court is that res judicata bars a second cause of action on the same cause of action between the same parties or privies and this is determined by whether or not the same evidence will sustain

both the present and the former action. A former judgment is conclusive only as to the facts directly in issue and do not extend to the facts which may be in controversy but which rest on evidence and are merely collateral. See Suhr v. City of Scribner, 207 Neb. 24, 295 N.W.2d 302 (1980). Conclusiveness of a prior judgment precluding subsequent litigation on same cause of action between same parties and privies is much broader in its application than a determination of questions actually involved in prior action. Conclusiveness of a prior judgment, including matters which might have been raised under doctrine of res judicata, does not apply where a second or later action is a separate and distinct cause of action. See Gasper v. Flott, 209 Neb. 260, 307 N.W.2d 500 (1981). When the second action alleges that the claim for relief occurred well past the dismissal of the first action, the second action is not the same claim and is not barred by res judicata or collateral estoppel. See Robertson v. School District No. 17 of Douglas County, 252 Neb. 103, 560 N.W.2d 469 (1977). In cases 38267, 38268, 38269, 38271 and 38279, the causes of action were "failure to render appropriate professional services in the diagnosis and treatment of polymyositis", "failure to render professional services in the diagnosis and treatment of a neurological injury, central pontine myelinolysis with aspiration pneumonia", failure to protect the subject from harm and to supervise the quality of care" [See Waite v. Carpenter, 1 Neb.App. 321], a wrongful death action, and a fraud perpetrated upon Glenn R. Waite by the defendants (App. 33). However, the only issues determined in the 38267, 38268, 38269, 38271, and 38279 were whether or not Glenn R. Waite is the sole beneficiary of the Estate and whether or not the personal representative had a liberty interest under Neb. Rev. Stat. 30-2476(21) to employ an attorney after the cases were filed (App. 52-57) and the only issue determined in Waite v. Carpenter, 3 Neb.App. 879, 533 N.W.2d 917 (Neb.App.1995)

was whether the trial court had jurisdiction to consider the plaintiff's motion to vacate the September 5, 1991 judgment of dismissal. Under Nebraska law, a cause of action consists of a primary right possessed by the plaintiff and a corresponding duty devolving upon the defendant combined with a "delict" or wrong done by the defendant. See Suhr v. City of Scribner, 207 Neb. 24, 295 N.W.2d 302 (1980). The evidence needed to sustain the present action would be to show that Anne Hippe, acting jointly with a State official or officials under color of state law, deprived Glenn R. Waite of a federal right. The evidence needed to sustain the former action in regard to medical negligence would have been to show that the defendants had a health provider - patient relationship with the decedent and the defendants had an obligation under that relationship, that the defendants breached that obligation and the breach of that obligation resulted in damages and the defendants were the proximate cause of those damages. The evidence need to sustain Glenn R. Waite's personal capacity fraud action in case 38269 would be to show that the defendants knowingly misrepresented facts, Glenn R. Waite relied on those misrepresented facts, Glenn. R. Waite did not know at the time that the defendants misrepresented those facts, and the defendants caused proximate injury to Glenn R. Waite. The defendants did not file an answer in the cases (App. 33). But, instead filed a motion for summary judgment claiming that the pleadings are a nullity because there are other heirs and beneficiaries in the decedent's estate besides Glenn R. Waite (App. 34). The evidence needed to sustain the summary judgment of dismissal in cases 38267, 38268, 38269, 38271, and 38279, in regard to the estate's cause of action or wrongful death action, would be to show that there were other heirs or beneficiaries in the decedent's estate besides Glenn R. Waite.

Obviously, the present cause of action or claim for relief is not the same cause of action or claim for relief as in cases 38267, 38268, 38269, 38271, and 38279 since the same evidence will not sustain both actions.

The third rule chosen by the State court is that the former judgment must be on the merits. This rule is applicable in both res judicata (claim preclusion) and collateral estoppel (issue preclusion). See R.W. v. Schrein, 263 Neb. 708, 642 N.W.2d 505 (2002). Res Judicata will not preclude a second suit between the same parties or privies if the forum in which the first action was brought did not have jurisdiction to adjudicate the action. See Ryan v. Ryan, 257 Neb. 682, 600 N.W.2d 739 (1999). The fourth amended petition alleges that the former judgment was sustained on the fact finding that the pleadings are a nullity because the personal representative alleged that there was a "family, daughter, and a spouse" and the defect in the pleading was that it was not prepared and signed by an attorney (App. 55). Under Nebraska law, a judgment based solely upon a technical defect of pleading does not involve the merits of controversy [facts giving rise to the plaintiff's cause of action] and is not res judicata. See Fuchs v. Parsons Construction Co., 172 Neb. 719, 111 N.W.2d 727 (1961). Furthermore, the doctrine of res judicata does not apply where court determines that litigant has not fulfilled condition precedent to bringing of suit and because of such failure is not entitled to the relief sought in the first action. See Security State Bank v. Gugelman, 230 Neb. 842, 434 N.W.2d 290 (1989). In the former action, the condition precedent was that the pleadings alleging an estate action had to be prepared and signed by an attorney. In Waite v. Carpenter, 3 Neb.App. 879, 533 N.W.2d 917 (Neb.App.1995), the Court of Appeals determined that, under law-of-the-case doctrine, the district court lacked jurisdiction to determine Glenn R. Waite's motion to vacate the September 5, 1991 judgment of dismissal which

alleged that he did not know until the fall of 1993 that Anne Hippe was an instructor in the school of nursing and at least one nursing student damaged the decedent (App. 35). "Law of the case" is restricted only to questions presented and decided by an appellate court at former hearing in the same case. See Security State Bank v. Gugelman, 230 Neb. 842, 434 N.W.2d 290 (1989). The questions presented to the appellate court on prior appeal was whether the district court correctly determined that Glenn R. Waite is not the sole heir and correctly determined that the personal representative had no liberty interest to employ an attorney after the cases were filed, *not* the question whether Anne Hippe, the wife of Judge Robert Hippe, had a pecuniary interest in the estate actions. See Waite v. Carpenter, 1 Neb.App. 321, 496 N.W.2d 1 (Neb.App. 1992). The phrase "Law of the case", as applied to the effect of previous orders on the later action of the court rendering them in the same case, merely expresses the practice of courts generally to refuse to reopen what has been decided, not a limit of their power. See Messinger v. Anderson, 225 U.S. 436, 56 L.ed. 1152, 32 S.Ct. 739 (1911). There is a difference between law-of-the-case and res judicata; one directs discretion, the other supersedes it and compels judgment. See Southern Ry. Co. v. Clift, 260 U.S. 316, 67 L.ed. 283, 43 S.Ct. 126 (1922). Therefore, the determination in Waite v. Carpenter, 3 Neb.App. 879, 533 N.W.2d 917 (Neb.App. 1995) that the trial court lacked jurisdiction to determine Glenn R. Waite's motion to vacate the September 5, 1991 judgment of dismissal is based on a discretionary determination that the court lacked jurisdiction, not on an absolute limit of the court's power. The law-of-the-case doctrine does not apply to the United States Supreme Court in regard to federal questions determined in previous stages of the litigation by a State's highest court. See Christianson v. Colt Industries Operating Corp., 486 U.S. 800, 100 L.Ed.2d 811, 108 S.Ct. 2166 (1988). In Dufree v. Duke,

375 U.S. 106, 114, 11 L.ed 2d 186, 84 S.Ct. 242 (1963), this Court stated that the general rule of finality of jurisdictional determinations is not without exceptions. Doctrines of federal pre-emption or sovereign immunity may in some contexts be controlling. In Howlett v. Rose, 496 U.S. 356, 110 L.Ed2d 332, 110 S Ct 2430 (1990), this Court held that a Florida court's determination that it lacked jurisdiction over the board in a 42 USC 1983 action was pre- empted by Supremacy Clause. This Court should grant the petition for writ of certiorari in this case and likewise rule that Court of Appeal's determination that it lacked jurisdiction to set aside a constitutionally infirm judgment, under the law-of-the-case doctrine, is pre-empted by the Supremacy Clause.

The fourth amended petition states that federal case 98-2816 was dismissed without prejudice on July 19, 1999 (App. 39). That case cannot bar this 42 USC 1983 action.

The fourth rule chosen by the State court is that the same parties or their privies must be involved in both actions. See R.W. v. Schrein, 263 Neb. 708, 642 N.W.2d 505 (2002). The fourth amended petition states that James A. Snowden is an attorney who represents Regional West Medical Center and its employees and that he was not a party to cases 38267, 38268, 38269, 38270, 38271, 38279, or 44590 (App. 28) and states that the only parties to federal case 98-2816 were Judge Hippe, Judge Empson, Sara Olsen, Ann Rosenberry, and Judge James Macken in their official capacities (App. 39).

The fifth rule chosen by the State court is that collateral estoppel bars the present action if the identical issue was decided in prior action. See R.W. v. Schrein, 263 Neb. 708, 642 N.W.2d 505 (2002). "Collateral estoppel" is an awkward phrase, but it stands for an extremely important principle in our adversary system of justice. It means simply that when an issue of ultimate fact has been determined by a valid and final judgment on that issue cannot again be litigated between the

same parties in any future lawsuit. See Ashe v. Swenson, 397 U.S. 436, 90 S.Ct. 1189, 25 L.Ed.2d 469 (1970). The fourth amended petition states that the issue decided in case 38270 was that no legal defendant had been named and there was another suit on file with the same allegations (App. 37). It also states that, in the fall of 1993, a motion to vacate the order of dismissal on October 30, 1991 was filed (App. 37), but it does not state the grounds on which that motion was filed.

The sixth rule chosen by the State court is that collateral estoppel bars the present action if the party against whom it is directed had a full and fair opportunity to litigate issue in prior action. See R.W. v. Schrein, 263 Neb. 708, 642 N.W.2d 505 (2002). The fourth amended petition alleges that the motion to vacate the October 30, 1991 dismissal order in case 38270 was decided by Judge Hippe (App. 37) whose wife was an employee of Regional West Medical Center and who acted jointly with a nursing student to damage the decedent (App. 30) and Judge Kortum, who decided the March 1, 1994 motion for new trial in case 38270, knew, on January 7, 1994, that he had had ex parte discussions with Anne Hippe and Robert Hippe regarding the fact that Anne Hippe was an employee of Regional West Medical Center and had a pecuniary interest in case 38270 and then Judge Kortum acted jointly with Anne Hippe, under color of state law, to deprive Glenn R. Waite of a federal right (App. 31). The motion to vacate the October 30, 1991 dismissal order and the motion for new trial were decided by impartial decision makers and therefore Glenn R. Waite did not have a full and fair opportunity to litigate the federal question issues raised in the present action in the prior action.

The seventh rule chosen by the State court is that privity implies a relationship by succession or representation between the party to the second action and the party to the prior action with respect to the right adjudicated in the first action. A wrongful death action by personal representative of estate does

not bar a beneficiary's personal cause of action connected with the same subject matter. See Hickman v. Southwest Dairy Suppliers, Inc., 194 Neb. 17, 230 N.W.2d 99 (1975). The fourth amended petition alleges that the fraud action in case 38269 was Glenn R. Waite's own personal cause of action (App. 33). Under Nebraska law, an order dismissing one cause of action while a second cause of action arising out of the same factual circumstances and involving the same parties but asserting a different legal theory of recovery is not a final order or judgment. See P.R. Halligan, Post 163, Etc. v. Schultz, 212 Neb. 329, 322 N.W.2d 657 (1982). The fourth amended petition alleges that case 38269 alleged two causes of action: a wrongful death action and Glenn R. Waite's personal capacity fraud action (App. 33). Only the first cause of action was dismissed on September 5, 1991 (App. 41, record below, Exhibit E, affidavit of Ann Rosenberry, clerk of court).

The rules chosen by the State court in determining whether res judicata bars a federal claim for are subject to the requirements of the Due Process Clause of U.S. Constitution. See Marrese v. Amer. Acad. Ortho. Surgeons, 470 U.S. 373, 380, 84 L.Ed.2d 274, 105 S.Ct. 1327 (1985).

The Court of Appeals has decided an important federal question [whether a state court can grant preclusive effect in its own courts to a constitutionally infirm judgment and whether merely granting a hearing without setting aside the constitutionally infirm judgment meets the requirements of the Due Process Clause] in a way that conflicts with the relevant decisions of this Court.

By granting the Appellees' motions for summary affirmance (App. 1-3), the Nebraska Court of Appeals ruled that res judicata and collateral estoppel bars all matters and

issues in this appeal including the federal questions (App. 50-51) of whether a state court can grant preclusive effect to a constitutionally infirm judgment and whether granting a hearing to set aside the constitutionally infirm judgment without setting aside the judgment meets the requirements of the Due Process Clause.

This Court held in Logan v. Zimmerman Brush Co., 455 U.S. 422, 432, 71 L.Ed.2d 265, 102 S. Ct. 1148 (1982), that once a State legislature has conferred a liberty or property interest by enacting a statute, the State courts cannot take away that interest without the appropriate procedural safeguards that comply with the Due Process Clause. In Kremer v. Chemical Construction Corp., 456 U.S. 461, 102 S.Ct. 1883, 72 L.Ed.2d 262 (1982), this Court held that a State must satisfy the applicable requirements of the Due Process Clause and may not grant preclusive effect in its own courts to a constitutionally infirm judgment. In Tumey v. Ohio, 273 U.S. 510, 71 L.ed. 749, 47 S.Ct. 437 (1927), this Court held that it certainly violates the 14th Amendment when a State subjects a person's liberty or property interest to the judgment of a court, the judge of which has a direct, personal, substantial pecuniary interest in reaching a conclusion against him in his case. In Armstrong v. Manzo, 380 U.S. 545, 14 L.Ed.2d 62, 85 S.Ct. 1187 (1965), this Court held that whenever a constitutional infirmity renders a judgment invalid, it is not cured by merely granting the litigant a hearing on his motion to set aside the decree, but is cured only by granting the petitioner's motion to set aside the decree and consider the case anew. In Aetna Life Ins. Co. v. Lavorie, 475 U.S. 813, 89 L.Ed.2d 823, 106 S.Ct. 1580 (1986), this Court held when more than one judge renders a decision and one judge has an interest that is "direct, personal, substantial, [and] pecuniary,", the "appearance of justice" will best be served by vacating the decision. In Ward v. Monroeville, 409 U.S. 57, 34 L.Ed.2d 267, 93 S.Ct. 80

(1972), this Court held that the Due Process Clause entitles a litigant to a neutral and detached judge in the first instance and a trial de novo before a higher court is of no constitutional relevance.

The fourth amended petition alleges that cases 38267, 38268, 38269, 38270, 38271, and 38279 are constitutionally infirm judgments because the cases were decided by Judge Hippe whose wife has a "direct, personal, substantial, [and] pecuniary," interest in the cases (App.30-33) and alleges that case 38270 is a constitutionally infirm judgment because no prior notice of attorney Snowden's and Judge Hippe's secret hearing was given to the Plaintiff (App. 37) and alleges that case 44590 is a constitutionally infirm judgment because it was dismissed without prior notice to the Plaintiff (App. 33). It also alleges that Judge Kortum knew on September 3, 1991 of Anne Hippe's pecuniary interest and he acted under color of state law to deprive the Plaintiff of his protected liberty or property interests (App. 36). A 42 USC 1983 claim for relief against Anne Hippe could not have been raised in cases 38267, 38268, 38269, 38270, 38271, 38279 or in the appeal taken to the Court of Appeals because (1) Glenn R. Waite did not know of Anne Hippe's pecuniary interest until the fall of 1993 and did not know of Judge Kortum's ex parte discussion with Robert O. Hippe concerning Anne Hippe pecuniary interest until March 1994 (App. 36) , and 2) the fact allegations set forth in this 42 USC 1983 action were not fully known and could not possibly have been known because the last act occurred on July 31, 1997 (App. 32).

The State court has merely granted a hearing on a motion to set aside the constitutionally infirm judgment without actually setting it aside and considering the case anew (App. 35) and then, on appeal, the Court of Appeals determined that the trial court lacked jurisdiction to consider a motion to set aside the constitutionally infirm judgment.

The Nebraska Court of Appeals has decided an important federal question [whether a state court can grant preclusive effect to a prior litigated issue when the litigant did not have a full and fair opportunity to litigate the federal claim or issue in previous action] in a way that conflicts with the relevant decisions of this Court.

By granting the motions for affirmance (App. 1-3), the Court of Appeals ruled that res judicata and collateral estoppel bars all matters and issues in this appeal including the federal question (App. 50) of whether a state court can grant preclusive effect to a federal question when the litigant did not have a full and fair opportunity to litigate the issue in previous action

In Allen v. McCurry, 449 U.S. 90, 101 S.Ct. 411, 66 L.Ed.2d 308 (1980), this Court granted further review over the federal question of whether or not a 42 USC 1983 action is barred by res judicata or collateral estoppel and what is the preclusive effect of a prior state court judgment. This Court stated that it has repeatedly recognized that the concept of collateral estoppel cannot apply when the party against whom the earlier decision is asserted did not have a "full and fair opportunity" to litigate issue in the earlier case. In Haring v. Prosise, 462 U.S. 306, 76 L.Ed.2d 595, 103 S.Ct. 2368 (1983), this Court held that in federal actions, including section 1983 actions, a state-court judgment will not be given collateral estoppel effect where the party against whom an earlier court decision is asserted did not have a full and fair opportunity to litigate the claim or issue decided in the first court.

Waite did not have a full and fair opportunity to litigate the U. S. Constitutional issues and his property and liberty interests conferred upon him by the state legislature in prior case because (1) his rights were subjected to one of two judges who had a "direct, personal, substantial, [and]

pecuniary," interest in the cause of action and in order to have a "full and fair" opportunity to litigate the constitutional issue, both judges at the September 3, 1991 hearing would have had to be impartial (App. 30-33), and (2) Judge Kortum knew of Anne Hippe's pecuniary interest and discussed this with Judge Robert Hippe before the original cases were dismissed on September 5, 1991 (App. 36) and then in cases 38267, 38268, 38270, and 38271 he acted, under color of state law, to deny a motion for new trial (App. 36-37).

The Nebraska Court of Appeals has decided an important federal question [whether a state court can grant preclusive effect to a prior judgment when the U.S. Constitutional claims did not even exist and could not have possibly been sued upon in previous suit] in a way that conflicts with the relevant decisions of this Court.

By granting the Appellees' motions for summary affirmance (App. 1-3), the Nebraska Court of Appeals ruled that res judicata and collateral estoppel bars all matters and issues in this appeal including the federal questions (App. 50) as to whether or not a State court can grant preclusive effect to a prior judgment when the U.S. constitutional claims did not even exist and could not have been sued upon in previous suit

In Lawlor et. al. v. National Screen Service Corp, et. al., 349 U.S. 322, 75 S.Ct. 865, 99 L.Ed.1122 (1955), this Court held that when new federal constitutional or new federal law violations are alleged which were not present in the former action, res judicata cannot be given to the constitutional claims which did not even exist and which could not possibly have been sued upon in a previous case.

The deprivations of Waite's U.S. Constitutional rights on August 29, 1996, October 3, 1996, April 30, 1997, and July

31, 1997 are not barred by res judicata or collateral estoppel because the last judgment alleged by the Appellees to bar this 42 USC 1983 action was decided on July 3, 1995 (App. 16). The federal law violation that occurred on July 31, 1997 could not have been sued upon in case 44590 since case 44590 was decided on April 30, 1997 (App. 33).

The Nebraska Court of Appeals has decided an important federal question [whether the Due Process Clause requires a state court after sustaining a demurrer and before dismissal of a lawsuit to provide a litigant with a prior notice and opportunity for hearing] in a way that conflicts with the relevant decisions of this Court.

By granting the Appellees' motions for summary affirmance (App. 1-3), the Nebraska Court of Appeals ruled that the pleadings raising the federal issue of whether Glenn R. Waite is entitled to a prior notice and the opportunity for a hearing [on the issue of whether an amendment will correct the defects] after the court sustains a demurrer and before dismissal is a nullity and res judicata and collateral estoppel bars all matters and issues in this appeal including the federal questions raised in the motion to vacate the July 3, 2000 Order and Judgment of Dismissal (App. 17-18).

There is no evidence whatsoever shown by the Court of Appeals or by the Appellees that the State court decided this important federal question in a previous judgment against Glenn R. Waite. The obligation to appropriately plead and prove that a prior judgment bars the present action is on the party claiming res judicata. United States v. Bliss, 172 U.S. 321, 19 S.Ct. 216, 43 L.ed. 463 (1898).

As stated previously, once a State legislature has conferred a liberty or property interest, the State courts cannot

take away that interest without the appropriate procedural safeguards that comply with the Due Process Clause. The notice and opportunity for a hearing must be granted at a meaningful time and in a meaningful manner. See Logan v. Zimmerman Brush Co., 455 U.S. 422, 432, 71 L.Ed.2d 265, 102 S. Ct. 1148 (1982). The procedural due process right to notice and hearing before deprivation of the liberty or property interest must be granted at a time when the deprivation can still be prevented; no later hearing for wrongful deprivation can undo the fact that the arbitrary taking that was subject to the right of procedural due process has already occurred. A person's liberty has been held protected by the due process clause, even when the liberty itself is a statutory creation of a state. See Wolff v. McDonnell, 418 U.S. 539, 41 L.Ed.2d 935, 94 S.Ct. 2963 (1974). The State legislature by enacting Neb. Rev. Stat. 25-854 granted Glenn R. Waite a liberty interest to amend a pleading, if the defects can be remedied by amendment, after a demurrer is sustained and before the action is dismissed. The Due Process right to a notice and opportunity for a hearing is not dependent upon an advance showing that one will surely prevail at the hearing. See Fuentes v. Shevin, 407 U.S. 67, 87, 32 L.Ed.2d 556, 92 S.Ct. 1983 (1972). Therefore, the Due Process right does not depend on an advance showing that the defects can be remedied by an amendment. Under Nebraska law, the two procedures of demurrer and dismissal are distinct. A pretrial motion to dismiss is not a recognized pleading in Nebraska (for the purposes of the current case, it is not relevant that the State legislature has revised its civil procedure after this case was appealed to a higher court). After a demurrer is filed pursuant to Neb. Rev. Stat. 25-806 and the court sustains the demurrer, the case still pends. Then, Neb. Rev. Stat. 25-854 applies. See Anderson and Anderson v. Matthis, 246 Neb. 215, 518 N.W.2d 94 (1994). Therefore, the meaningful time under the Due

Process Clause to provide the person affected with a proper notice and opportunity for a hearing would be after the demurrer is sustained and before the action is dismissed which is a time when the deprivation can still be prevented.

CONCLUSION

It should be this Court that ultimately decides whether or not the federal questions presented for review are so unsubstantial as to not require argument and whether or not the 42 USC 1983 pleadings are a nullity, and thus, whether or not the determination by the Court of Appeals that Glenn R. Waite is not the sole heir of the decedent also determines whether or not Glenn R. Waite alleges the two allegations necessary to state a cause of action under 42 USC 1983.

This Court should grant this Petition for Writ of Certiorari because the Nebraska Court of Appeals has decided several important federal questions in a way that conflicts with the relevant decisions of this Court. It decided: (1) that the plaintiff, in a 42 USC 1983 action, needs to allege more than two allegations (that some person deprived him of a federal right and such person acted under color of state law) to state a cause of action; (2) that a State court can grant preclusive effect to a constitutionally infirm judgment in its own courts; (3) that a State court can grant collateral estoppel effect to a prior judgment when the person against whom it is being applied did not have a "full and fair" opportunity to litigate the federal issue in prior proceeding; (4) that a State court can bar U.S. Constitutional claims that did not even exist and which could not have possibly been sued upon in previous suit; and (5) that a State court can deprive a litigant of his U. S. Constitutional right to a notice and opportunity for a hearing at a meaningful time.

The Petitioner prays that this Court will grant his Petition for Writ of Certiorari because it would determine several important federal questions. If a State court can grant preclusive effect to its own constitutionally infirm judgment, then the Due Process Clause has no real meaning and any State can disregard the requirements of the Due Process Clause without any accountability to a higher authority.

Respectively Submitted,

Glenn R. Waite,
Petitioner
1591 S. Dandelion St., #7
Pahrump, NV 89048
775-751-8592

No. _____

In The

Supreme Court Of The United States

GLENN R. WAITE,

Petitioner,

v.

ANNE HIPPE, et al.,

Respondents.

ON PETITION FOR WRIT OF CERTIORARI
TO THE NEBRASKA COURT OF APPEALS

APPENDIX TO PETITION FOR WRIT OF CERTIORARI

App. 1

NEBRASKA SUPREME COURT
AND NEBRASKA COURT OF APPEALS
OFFICE OF THE CLERK
P.O. BOX 98910
2413 State Capitol Building
Lincoln, Nebraska 68509

April 16, 2003

Glenn R. Waite, Personal Representative
1591 S. Dandelion St., Apt. 7
Pahrump, NV 89048

IN CASE OF: A-02-001391, Waite v. Hippe

Mot. of Appellee for Summary Dism/S/A filed 02/27/03:

has been reviewed by the court and the following order entered:

Appellees' motions for summary affirmance are sustained; judgment affirmed. See Rule 7B(2); Russell v. Bridgens, 264 Neb. 217, 647 N.W.2d 56 (2002); Baltensperger v. United States Dept. of Ag., 250 Neb. 216, 548 N.W.2d 733 (1996).

Respectively,

CLERK OF THE SUPREME COURT
AND COURT OF APPEALS

Glenn R. Waite, Personal Representative
1591 S. Dandelion St., Apt. 7
Pahrump, NV 89048

IN CASE OF: A-02-001391, Waite v. Hippe

Mot Appe Regional West Summary Dism/S/A filed 3/05/03:

has been reviewed by the court and the following order entered:

Appellees' motions for summary affirmance are sustained; judgment affirmed. See Rule 7B(2); Russell v. Bridgens, 264 Neb. 217, 647 N.W.2d 56 (2002); Baltensperger v. United States Dept. of Ag., 250 Neb. 216, 548 N.W.2d 733 (1996).

Respectively,

CLERK OF THE SUPREME COURT
AND COURT OF APPEALS

Glenn R. Waite, Personal Representative
1591 S. Dandelion St., Apt. 7
Pahrump, NV 89048

IN CASE OF: A-02-001391, Waite v. Hippe

Mot. Appellee Hippe for Summary Dism/S/A filed 3/06/03:

has been reviewed by the court and the following order entered:

Appellees' motions for summary affirmance are sustained; judgment affirmed. See Rule 7B(2); Russell v. Bridgens, 264 Neb. 217, 647 N.W.2d 56 (2002); Baltensperger v. United States Dept. of Ag., 250 Neb. 216, 548 N.W.2d 733 (1996).

Respectively,

CLERK OF THE SUPREME COURT
AND COURT OF APPEALS

Glenn R. Waite, Personal Representative
1591 S. Dandelion St., Apt. 7
Pahrump, NV 89048

IN CASE OF: A-02-001391, Waite v. Hippe

Mot Appes Empson for Summary Dism/S/A filed 3/07/03:

has been reviewed by the court and the following order entered:

Appellees' motions for summary affirmance are sustained; judgment affirmed. See Rule 7B(2); Russell v. Bridgens, 264 Neb. 217, 647 N.W.2d 56 (2002); Baltensperger v. United States Dept. of Ag., 250 Neb. 216, 548 N.W.2d 733 (1996).

Respectively,

CLERK OF THE SUPREME COURT
AND COURT OF APPEALS

IN THE DISTRICT COURT OF SCOTTS BLUFF COUNTY, NEBRASKA

GLENN R. WAITE, individually and as Personal Representative of Harriet I. Waite, Deceased,
Plaintiff,

vs.

ANNE HIPPE, et. al.,
Defendants.

Case No. CI99-590

FINAL ORDER

DATE OF HEARING: August 28, 2002
DATE OF RENDITION: November 1, 2002
DATE OF ENTRY: Date of filing by court clerk
TYPE OF HEARING: Open court.
APPEARANCES:

For plaintiff:	Plaintiff pro se
For defendants:	
A. Hippe:	Jerald Ostdiek.
R. Hippe, Empson, Kortum, & Gless:	No Appearance; Charles E. Lowe, Assistant Attorney General, on brief.
Carpenter, S.I.M.G., Novotny, Mangana, Packard, Himes, & O'Holleran:	No appearance, Mark E. Novotny on brief.
R.W.M.C., Chaloupka, & Snowden:	Maren Chaloupka; James A. Snowden on brief.

SUBJECT OF HEARING: Plaintiff's motions:
(1) to vacate (filed 7/2/02);
(2) requesting a determination (filed 7/15/02).
PROCEEDINGS: Refer to "Order" rendered August 29, 2002.
FINDINGS: The court finds:

1. This court, having carefully considered all grounds of both of the plaintiff's motions, determines the motions lack merit in all respects.

2. The motions should be denied.

ORDER: IT IS ORDERED that:

1. The plaintiff's motion to vacate is denied in all respects.

2. The plaintiff's motion requesting a determination is denied in all respects.

3. Any and all requests for attorneys' fees are denied.

4. This is a final order.

Signed in chambers at Ainsworth, Nebraska on November 1, 2002.
DEEMED ENTERED upon the date of filing by the court clerk.

BY THE COURT:

_____
William B. Cassel
District Judge

IN THE DISTRICT COURT OF SCOTTS BLUFF COUNTY, NEBRASKA

GLENN R. WAITE, individually and as Personal Representative of Harriet I. Waite, Deceased,
Plaintiff,

vs.

ANNE HIPPE, et. al.,
Defendants.

Case No. CI99-590
ORDER AND JUDGMENT OF DISMISSAL

DATE OF HEARING: June 13, 2000
DATE OF RENDITION: July 3, 2000
DATE OF ENTRY: Date of filing by court clerk
TYPE OF HEARING: Telephone conference call upon Special permission

APPEARANCES:

For plaintiff:	Plaintiff pro se
For defendants:	
A. Hippe:	Richard A. Douglas without defendant.
R. Hippe, Empson, Kortum, & Gless:	Charles E. Lowe, Assistant Attorney General, without defendants.
Carpenter, S.I.M.G., Novotny, Mangana, Packard, Himes, & O'Holleran:	Mark E. Novotny without defendants.
Novotny:	defendant pro se.
R.W.M.C., Chaloupka, & Snowden:	James A. Snowden with defendant Chaloupka.

Snowden: defendant pro se.

SUBJECT OF HEARING: The following pleadings:

1. respective demurrers to plaintiff's fourth amended petition filed by defendants:

A. Snowden on 3/6/00;
B. R.W.M.C. on 3/6/00;
C. A. Hippe, on 3/8/00;
D. Chaloupka on 3/9/00;
E. Carpenter, S.I.M.G., Novotny, Mangana, Packard, Himes, O'Holleran on 3/9/00; and
F. R. Hippe, Empson, Kortum, & Gless on 3/10/00;

2. plaintiff's motion for summary judgment on 04/27/00;

3. motions for continuance of summary judgment hearing filed by defendants;

A. Carpenter, S.I. M.G., Novotny, Mangana, Packard, Himes, O'Holleran on 5/3/00;
B. A. Hippe on 5/17/00; and
C. R. Hippe, Empson, Kortum, & Gless on 5/23/00.

PROCEEDINGS: Refer to "Order" rendered on June 13, 2000.

FINDINGS: The court finds:

1. The demurrers should be sustained on the particular grounds stated in the "Order" section.

2. Because it is clear that no reasonable possibility exists that amendment will correct the defects, leave to amend must be denied. *Nebraska Beef v. Universal Surety Co.*, 9 Neb. App. 40, ___ N.W.2d___ (2000).

3. The court is not satisfied that the plaintiff has met his burden to show that there is no genuine issue as to any material fact or as to the ultimate inferences that may be drawn from the facts and that the plaintiff is entitled to judgment as a matter of law. *Philpot v. Aguglia*, 259 Neb. 573, ___ N.W.2d___(2000).

4. The motions for continuance are moot.

ORDER AND JUDGMENT: IT IS ORDERED AND ADJUDGED that:

1. The demurrer of defendant James A. Snowden is sustained upon all stated grounds.

2. The demurrer of defendant Regional West Medical Center is sustained upon all stated grounds.

3. The demurrer of defendant Anne Hippe is sustained upon the grounds stated in paragraphs 2, 3, 5, 6, 7, and 8 thereof, and the first and last sentences of paragraph 9 thereof.

4. The demurrer of defendant Robert Chaloupka is sustained upon all stated grounds.

5. The demurrer of defendants W. Scott Carpenter, M.D., et al. is sustained upon the grounds stated in paragraphs 2, 4, 5, 6, 7, 8, 9, 10, 11, and 12 thereof.

6. The demurrer of defendants Robert of Hippe, et. al., is sustained upon the grounds in paragraphs 1, 3, 4, and 5 thereof.

7. Leave to file further amended petition is denied.

8. The plaintiff's motion for summary judgment is denied.

9. The respective motions of various defendants for continuance on plaintiff's motion for summary judgment are denied as moot.

10. JUDGMENT of dismissal is entered dismissing the Plaintiff's Fourth Amended Petition with prejudice at plaintiff's cost.

11. Any and all requests for attorneys' fees are denied.

Signed in chambers at Ainsworth, Nebraska, on July 3, 2000.

DEEMED ENTERED upon the filing by the court clerk.

BY THE COURT:

_____

William B. Cassel
District Judge

NEBRASKA SUPREME COURT
AND NEBRASKA COURT OF APPEALS
OFFICE OF THE CLERK
P.O. BOX 98910
2413 State Capitol Building
Lincoln, Nebraska 68509
402-471-3731

October 17, 2000

Glenn R. Waite, Personal Representative
308 Burshears Blvd.
La Junta, CO 81050

IN CASE OF: A-00-0782, Waite v. Hippe

Misc.Submissions to Court-Juris 7A(2) filed 09/25/00

has been reviewed by the court and the following order entered:

Appeal dismissed for lack of jurisdiction. See Rule 7A(2).

Respectively,

CLERK OF THE SUPREME COURT
AND COURT OF APPEALS

App 10

NEBRASKA SUPREME COURT
AND NEBRASKA COURT OF APPEALS
OFFICE OF THE CLERK
P.O. BOX 98910
2413 State Capitol Building
Lincoln, Nebraska 68509
402-471-3731

September 22, 2003

Glenn R. Waite, Personal Representative
1591 S. Dandelion St., Apt. 7
Pahrump, NV 89048

IN CASE OF: A-02-001391, Waite v. Hippe

Appellant/Motion for Rehearing filed 04/29/03:

has been reviewed by the court and the following order entered:

Motion of appellant for rehearing overruled.

Respectively,

CLERK OF THE SUPREME COURT
AND COURT OF APPEALS

NEBRASKA SUPREME COURT
AND NEBRASKA COURT OF APPEALS
OFFICE OF THE CLERK
P.O. BOX 98910
2413 State Capitol Building
Lincoln, Nebraska 68509
402-471-3731

January 14, 2003

Glenn R. Waite, Personal Representative
1591 S. Dandelion St., Apt. 7
Pahrump, NV 89048

IN CASE OF: A-02-001391, Waite v. Hippe

Pet. Appellant for Further Review & Brf filed 10/15/03

has been reviewed by the court and the following order entered:

Petition for further review overruled.

Respectively,

CLERK OF THE SUPREME COURT
AND COURT OF APPEALS

IN THE COUNTY COURT OF SHERIDAN COUNTY, NEBRASKA

IN THE MATTER	) NO. PR90-78
OF THE ESTATE	) ORDER OF COMPLETE
HARRIET I. WAITE,	) SETTLEMENT &
Deceased	) DISTRIBUTION

The petition of Glenn R. Waite, Personal Representative and heir of decedent, filed herein, for a formal proceeding to adjudicate the final settlement and distribution of the above estate came on for hearing this 15th day of May 1996 and the only person appearing was Glenn R. Waite; and

It appearing to the Court that on January 5, 1994 the Court entered a decree of heirship which named Peter A. Waite, spouse; Glenn R. Waite, natural son; Doris R. Butler, natural daughter; and Beverly E. Sipple, natural daughter; and as the sole and only heirs; and it is noted by the Court that Peter A. Waite, Doris R. Butler, and Beverly E. Sipple have renounced all interests in the estate assets; leaving other possible persons to take the estate by representation through the heirs who have renounced their interests; and it appearing to the Court that Wanda Sipple Hall, Wendy Sipple, WaLinda Sipple, Michelle Warzecha, and Shannon Kadlec are granddaughters of the decedent and said persons having been notified pursuant to Neb. Rev. Stat. section 30-2220 (Cumm Supp. 1993); and said persons have not appeared in this matter, and any other persons have been notified by publication pursuant to Nebraska law,

It is hereby Ordered, Adjudged, and Decreed that the Court does approve the petition of Glenn R. Waite for final settlement and does approve his previous distributions of estate assets.

FILED May 15, 1996	Charles Plantz
SHERIDAN COUNTY COURT	County Judge

IN THE SUPREME COURT FOR THE STATE OF NEBRASKA

GLENN R. WAITE, Plaintiff-Appellant,	)	No. S-02-1391
vs.	)	MOTION FOR
ANNE HIPPE, ROBERT O. HIPPE, PAUL D. EMPSON, ALFRED J. KORTUM, ALAN G. GLESS, W. SCOTT CARPENTER, M.D., ARMANDO J. MANGANA, M.D., WILLIAM M. PACKARD, M.D., SCOTTSBLUFF INTERNAL MEDICINE GROUP, LARRY O'HOLLERAN, M.D., TERRY MARK HIMES, D.O., REGIONAL WEST MEDICAL CENTER, MARK E. NOVOTNY, ROBERT P. CHALOUPKA, AND JAMES A. SNOWDEN, Defendants-Appellees.	)	SUMMARY DISMISSAL OR AFFIRMANCE OF APPELLEES REGIONAL WEST MEDICAL CENTER ROBERT P. CHALOUPKA, JAMES A. SNOWDEN

COME NOW, Appellees, Regional West Medical Center, Robert P. Chaloupka, and James Snowden, and pursuant to Rule 7(B) of the Rules of the Supreme Court/ Court of Appeals of the State of Nebraska, hereby move the Court for an order of summary dismissal or, in the alternative, affirmance of the above-captioned matter. This motion is brought pursuant to Rule 7(B)(3) and this motion to affirm is joined with, or made in the alternative with, a motion to dismiss.

2. Motion for Summary Affirmance.

To avoid needless repetition, these Appellees hereby adopt and incorporate the argument of Co-Appellees, Carpenter and Hippe, et. al.

WHEREFORE, the above noted Appellees pray that the Court summarily dismiss the appeal or, in the alternative, summarily affirm the District Court's Order of November 1, 2003.

REGIONAL WEST MEDICAL CENTER,
ROBERT P. CHALOUPKA, AND
JAMES SNOWDEN, Appellees.

By: _____

James A. Snowden #13927
Wolfe, Snowden, Hurd, Luers & Ahl, LLP
1248 "O" Street
Suite 830, NBC Center
Lincoln, Nebraska 68508
(402) 474-1507

IN THE SUPREME COURT FOR THE STATE OF NEBRASKA

GLENN R. WAITE, Plaintiff-Appellant, vs. ANNE HIPPE, ROBERT O. HIPPE, PAUL D. EMPSON, ALFRED J. KORTUM, ALAN G. GLESS, W. SCOTT CARPENTER, M.D., ARMANDO J. MANGANA, M.D., WILLIAM M. PACKARD, SCOTTSBLUFF INTERNAL MEDICINE GROUP, LARRY O'HOLLERAN, M.D., TERRY MARK HIMES, D.O., REGIONAL WEST MEDICAL CENTER, MARK E. NOVOTNY, ROBERT P. CHALOUPKA, AND JAMES A. SNOWDEN, Defendants-Appellees.	No. S-02-1391 MOTION FOR SUMMARY DISMISSAL OR AFFIRMANCE OF APPELLEE ANNE HIPPE

COME NOW, Appellee, Anne Hippe, and pursuant to Rule 7(B) of the Rules of the Supreme Court/ Court of Appeals of the State of Nebraska, hereby move the Court for an order of summary dismissal or, in the alternative, affirmance of the above-captioned matter. This motion is brought pursuant to Rule 7(B)(3) and this motion to affirm is joined with or made in the alternative with motion to dismiss

2. Motion for Summary Affirmance.

The above Appellees state that the questions presented for review are so unsubstantial as to not require argument in that, based upon Waite v. Carpenter, 1 Neb.App.

321, 496 N.W.2d 1 (Neb.App.1992) and Waite v. Carpenter, 3 Neb.App. 879, 533 N.W.2d 917 (Neb.App.1995), the pleadings filed in this matter are, and continue to be, a nullity. See Back Acres Pure Trust vs. Fahnlander, 233 Neb. 28, 443 N.W.2d 604, 605 (1989); Nicklaus vs. Abel, 164 Neb. 842, 852-53, 83 N.W.2d 904, 911 (1957). The doctrine of res judicata bars re-litigation of all matters and issues in this appeal. See Baltensperger vs. United States Department of Agriculture, 250 Neb. 216, 548 N.W.2d 733 (1996); Lincoln Lumbar Company vs. Fowler, 248 Neb. 221, 533 N.W.2d 898 (1995).

WHEREFORE, Appellee, Anne Hippe, prays that the court summarily affirm the District Court's November 1, 2003, Order and dismiss Appellant's appeal in this matter.

ANNE HIPPE, Defendant-Appellee

By _____

Richard A. Douglas, NBSA#11067
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IN THE DISTRICT COURT OF SCOTTS BLUFF COUNTY, NEBRASKA

GLENN R. WAITE, individually and as personal representative of Harriet I. Waite, deceased, Plaintiff, vs. ANNE HIPPE, ROBERT O. HIPPE, PAUL D. EMPSON, ALFRED J. KORTUM, ALAN G. ALAN G. GLESS, W. SCOTT CARPENTER, M.D., REGIONAL WEST MEDICAL CENTER, SCOTTSBLUFF INTERNAL MEDICINE GROUP, MARK E. NOVOTNY, ROBERT P. CHALOUPKA, JAMES A. SNOWDEN, ARMANDO J. MANGANA, M.D., WILLIAM M. PACKARD, M.D., TERRY MARK HIMES, D.O., and LARRY O'HOLLERAN, M.D., Defendants.	* * *

Internal Medicine Group, Mark Novotny, Armando J. Mangana, M.D., William M. Packard, M.D., Terry Mark Himes, D.O., and Larry O'Holleran, M.D. as it relates to the Plaintiff's fourth amended petition.

2. There was absolutely no prior notice to Plaintiff, Glenn R. Waite, that this Court was acting, on its own motion on July 3, 2000 after sustaining the demurrers, to dismiss Defendants James A. Snowden, Regional West Medical Center, Robert Chaloupka, W. Scott Carpenter, M.D., Scottsbluff Internal Medicine Group, Mark Novotny, Armando J. Mangana, M.D., William M. Packard, M.D., Terry Mark Himes, D.O., and Larry O'Holleran, M.D. as it relates to the Plaintiff's fourth amended petition.

3. Neb. Rev. Stat. section 25-854 (Reissue 1995) is repugnant to and violates the U.S. Constitution as applied by this Court to Plaintiff Glenn R. Waite because it does not allow him a prior notice of a motion and the opportunity for a hearing on the issue or controversy before this Court dismisses the action or party based on that issue or controversy.

Plaintiff, GLENN R. WAITE, pursuant to the court's inherent power or pursuant to Neb. Rev. Stat. section 25-2001 (Cumm.Supp.2000), or pursuant to the Court's equitable powers, moves this Court for an order vacating this Court's Order and Judgment of Dismissal signed on July 3, 2000 and filed July 5, 2000 for the following reasons:

(1) NO FINAL JUDGMENT: Pursuant to Neb. Rev. Stat. section 25-705 (6) (Cumm.Supp.1998) in effect on July 3, 2000 and Neb. Rev. Stat. sections 25-1315 (Cumm. Supp. 2000) now in effect, the Order and Judgment of Dismissal, however designated, is subject to revision at any time since it adjudicated fewer than all the claims or fewer than all the rights and liabilities of all the parties and failed to enter an order determining that there is no just reason for delay.

The Order and Judgment of Dismissal, on its face, (1) failed to sustain or overrule the factual claim of Anne Hippe that the Order of complete settlement and distribution attached to Plaintiff's petition signed by Charles Plantz, County Judge, establishes that Peter A. Waite, Doris R. Butler, and Beverly E. Sipple have renounced all interest in the estate assets, which results in the interest of Beverly E. Sipple being vested in the three daughters of Beverly E. Sipple, to wit: Wanda Sipple-Hall, Wendy Sipple, and DaLinda [sic] Sipple; and the interests of Doris R. Butler being vested in her two daughters, Michelle Warzecha and Shannon Kadlec and therefore these interests are being represented by the plaintiff; and (2) failed to sustain or overrule the demurrers of Anne Hippe, W. Scott Carpenter, M.D., Scottsbluff Internal Medicine Group, Mark Novotny, Armando J. Mangana, M.D., William M. Packard, M.D., Terry Mark Himes, D.O., Larry O'Holleran, M.D., Robert Hippe, Paul Empson, Alfred Kortum, Alan Gless on the basis that the several causes of action are improperly joined.

(2) IRREGULARITY IN THE PROCEEDINGS: It is contrary to the course and practice of the courts to allow Anne Hippe to raise in her demurrer the affirmative defense claim that the plaintiff is engaging in the unauthorized practice of law in this action against her because it denies the factual allegations of the petition which states that Wanda Sipple Hall, Wendy Sipple, WaLinda Sipple, Michelle Warzecha, and Shannon Kadlec have renounced all estate assets including any survival action and any wrongful death action assets. Plaintiff exercised due diligence and timely filed an objection dated March 15, 2000 to Anne Hippe's demurrer.

(3) LACK OF JURISDICTION: This Court lacked jurisdiction to consider Mark Novotny's, Anne Hippe's, and Alan Gless' demurrers which claimed that the plaintiff's

claims against them are barred by res judicata or issue preclusion because these defendants were never made a party to any previous lawsuit involving the plaintiff and therefore Mark Novotny, Anne Hippe, and Alan Gless lack standing to make these claims. This Court lacked jurisdiction to sustain Anne Hippe's demurrer on the basis that the plaintiff is engaging in the unauthorized practice of law because Anne Hippe lacks standing to assert the claims of a third party namely the "judges of such courts" or a prosecuting attorney acting on behalf of the State of Nebraska.

Plaintiff attaches an affidavit in support of this motion.

Plaintiff requests an evidentiary hearing on this motion.

WHEREFORE, Plaintiff, GLENN R. WAITE, moves this Court to vacate the Order and Judgment of Dismissal dated July 3, 2000 based on the foregoing grounds.

Glenn R. Waite, individually, and
as former personal representative,
Plaintiff,
1591 S. Dandelion St., Apt. 7
Pahrump, NV 89048
775-751-8592

IN THE DISTRICT COURT OF SCOTTS BLUFF COUNTY, NEBRASKA

GLENN R. WAITE, individually and as Personal Representative of Harriet I. Waite, Deceased, Plaintiff, vs. ANNE HIPPE, ROBERT O. HIPPE, PAUL D. EMPSON, ALFRED J. KORTUM, ALAN G. GLESS, W. SCOTT CARPENTER, M.D., REGIONAL WEST MEDICAL CENTER, SCOTTSBLUFF INTERNAL MEDICINE GROUP, MARK E. NOVOTNY, ROBERT P. CHALOUPKA, JAMES A. SNOWDEN, ARMANDO J. MANGANA, M.D., WILLIAM M. PACKARD, M.D., TERRY MARK HIMES, D.O., and LARRY O'HOLLERAN, M.D., Defendants.	*	No. CI99-590 AFFIDAVIT OF GLENN R. WAITE

GLENN R. WAITE, being first duly sworn, affirms the following based on personal knowledge:

1. I am the plaintiff in the above captioned case and I do not represent the rights of any person or entity other than my rights as personal representative and my own individual rights. I do not represent the decedent's estate or any heirs other than myself.

2. Prior to receiving a copy of the Order and Judgment of dismissal on or about July 10, 2000 which sustained the demurrers of the defendants on certain grounds, I did

not receive any prior notice of a motion to dismiss or a request to dismiss my fourth amended petition filed on behalf of defendants James A. Snowden, Regional West Medical Center, Robert Chaloupka, W. Scott Carpenter, M.D., Scottsbluff Internal Medicine Group, Mark Novotny, Armando J. Mangana, M.D., William M. Packard, M.D., Terry Mark Himes, D.O., and Larry O'Holleran, M.D. I did not receive any prior notice that the Court was acting on its own motion to dismiss these defendants.

3. Prior to filing the above captioned lawsuit, no previous lawsuit was filed by the above captioned plaintiff against Anne Hippe, Mark Novotny, or Alan Gless.

FURTHER AFFIANT SAYETH NOT.

_____

Glenn R. Waite

Subscribed and sworn to before me this the ___ day of June 2002.

_____

Notary Public

IN THE DISTRICT COURT OF SCOTTS BLUFF COUNTY, NEBRASKA

GLENN R. WAITE, individually and as Personal Representative of Harriet I. Waite, Deceased, Plaintiff,	*	No. CI99-590
vs.	*	NOTICE OF
ANNE HIPPE, ROBERT O. HIPPE, PAUL D. EMPSON, ALFRED J. KORTUM, ALAN G. GLESS, W. SCOTT CARPENTER, M.D., REGIONAL WEST MEDICAL CENTER, SCOTTSBLUFF INTERNAL MEDICINE GROUP, MARK E. NOVOTNY, ROBERT P. CHALOUPKA, JAMES A. SNOWDEN, ARMANDO J. MANGANA, M.D., WILLIAM M. PACKARD, M.D., TERRY MARK HIMES, D.O., and LARRY O'HOLLERAN, M.D., Defendants.	*	APPEAL TO THE NEBRASKA SUPREME COURT

TO: ALL PARTIES

I, Glenn R. Waite, in any applicable capacity, hereby give notice that I will be seeking an appeal to the Nebraska Supreme Court of the FINAL ORDER filed November 4, 2002 and signed by Judge William Cassel. Pursuant to Neb. Rev. Stat. section 24-1106, only the Nebraska Supreme Court has jurisdiction over this case since the Fourth Amended Petition alleges that Neb. Rev. Stat. section 7-101 as applied to the plaintiff in case 38269 by the defendants is repugnant to and violates the U.S. Constitution, that Neb.

Rev. Stat. section 25-1912 as applied to the plaintiff in case 38269 by the defendants is repugnant to the U.S. Constitution, and that Neb. Rev. Stat. section 27-201 on its face and as applied to the plaintiff by the defendants is repugnant to the U.S. Constitution. Plaintiff's motion to vacate the July 3, 2000 Order and judgment of dismissal alleges that Neb. Rev. Stat. section 25-854 is repugnant to the U.S. Constitution as applied to the plaintiff by the defendants. The Final Order filed November 4, 2002 denied these allegations.

Glenn R. Waite,
Plaintiff,
1591 S. Dandelion St., Apt. 7
Pahrump, NV 89048
775-751-8592

CERTIFICATE OF SERVICE

I certify that I served a true and correct copy of my NOTICE OF APPEAL upon Charles E. Lowe, 2115 Capitol Bldg, Lincoln, NE 68509-8920; Richard A Douglas, 105 East 16th St., P.O. Box 419, Scottsbluff, NE 69343-0419; James A. Snowden, Suite 830, 1248 "O" St., Lincoln, NE 68508-1424; and Mark E. Novotny, 10306 Regency Parkway Dr., Omaha, NE 68114; by placing a copy in the U.S. Mail, postage prepaid, this the 25th day of November 2002.

Glenn R. Waite

IN THE DISTRICT COURT OF SCOTTS BLUFF COUNTY, NEBRASKA

GLENN R. WAITE, individually and as Personal Representative of Harriet I. Waite, Deceased, Plaintiff, vs. ANNE HIPPE, ROBERT O. HIPPE, PAUL D. EMPSON, ALFRED J. KORTUM, ALAN G. GLESS, W. SCOTT CARPENTER, M.D., REGIONAL WEST MEDICAL CENTER, SCOTTSBLUFF INTERNAL MEDICINE GROUP, MARK E. NOVOTNY, ROBERT P. CHALOUPKA, JAMES A. SNOWDEN, ARMANDO J. MANGANA, M.D., WILLIAM M. PACKARD, M.D., TERRY MARK HIMES, D.O., and LARRY O'HOLLERAN, M.D., Defendants.	*	No. CI99-590 FOURTH AMENDED PETITION and PRAECIPE JURY TRIAL DEMANDED

Plaintiff, Glenn R. Waite, hereby files his fourth amended petition pursuant to the Court's order dated February 22, 2000. Plaintiff states his causes of action as follows:

JURISDICTIONAL STATEMENT

1. Plaintiff, Glenn R. Waite, is the personal representative and sole heir of the Estate of Harriet I. Waite, deceased, pursuant to Court Orders by the Sheridan County Nebraska Court which are attached as Exhibit A. Wanda Sipple Hall, Wendy Sipple, WaLinda Sipple, Michelle Warzecha, and Shannon Kadlec have never claimed any rights to the assets of Harriet Waite's estate and have renounced all assets

including any survival action and any wrongful death action assets they might claim under Beverly Sipple or Doris Butler. Exhibit B is a certificate showing that the letters of personal representative are still in effect for the purpose of bringing this action in the name of the personal representative pursuant to Neb. Rev. Stat. section 30-810. However, since there has been an order of complete settlement, the personal representative no longer represents the estate. Plaintiff is the only real party in interest and sues the defendants both in his individual capacity and as the personal representative. Plaintiff is a natural born citizen of the United States of America and resides at 1591 S. Dandelion St., Apt. 7, Pahrump, NV 89048.

2. Defendant, Anne Hippe, is the wife of Judge Robert O. Hippe and was married to Judge Robert O. Hippe at all times in reference to this cause of action. She is a registered nurse and is the Chairsperson of the School of Practical Nursing at Western Nebraska Community College and at Regional West Medical Center. She is a citizen of the State of Nebraska and resides at 1018 East 35th St., Scottsbluff, Nebraska.

3. Defendant, Robert O. Hippe, is a District Court Judge for the County of Scotts Bluff, State of Nebraska. Defendant, Robert O. Hippe, was at all times in reference to this cause of action married to Anne Hippe. Plaintiff sues defendant, Robert O. Hippe, only in his individual capacity. Defendant, Robert O. Hippe, is a citizen of the State of Nebraska and resides at 1018 East 35th St., Scottsbluff, Nebraska.

4. Defendant, Paul D. Empson, is a Judge of the twelfth judicial district of the State of Nebraska. Plaintiff sues defendant Empson only in his individual capacity. Defendant, Empson, resides at 817 East 8th St., Chadron, NE and is a citizen of the State of Nebraska.

5. Defendant, Alfred J. Kortum, is a retired Judge of the twelfth judicial district of the State of Nebraska. Plaintiff

sues defendant Kortum only in his individual capacity. Defendant Kortum resides 1940 Seventeenth St.,Gering, NE.

6. Defendant, Alan G. Gless, is a Judge of the twelfth judicial district of the State of Nebraska. Plaintiff sues defendant Gless only in his individual capacity. Defendant Gless' address is 433 North Chestnut, Wahoo, NE 68066.

7. Defendant, W. Scott Carpenter, M.D., was a former member of the Scottsbluff Internal Medicine Group and is a named party in cases 38267, 38268, 38269, 38271 and 38279 filed in the District Court of Scotts Bluff County, Nebraska. Defendant Carpenter's current address is 1222 W. Ives, Marshfield, Wisconsin.

8. Defendant, Regional West Medical Center, is an acute care general hospital corporation doing business in the State of Nebraska. Defendant, Regional West Medical Center, is a named defendant in cases 38267, 38268, 38269, 38270, and 38271 filed in the District Court of Scotts Bluff County, Nebraska. The corporation's business address is 4021 Avenue B., Scottsbluff, Nebraska. Jana Houck, R.N., Donna Rusen, R.N. and Judy Bowlin, L.P.N. were or are employees of Regional West Medical Center and are named defendants in case 38271 filed in this court. Nancy Adams is or was an employee of Regional West Medical Center and is a named defendant in case 38270.

9. Defendant, Scottsbluff Internal Medicine Group, is a group of physicians. Physicians in the group at all times in reference to this cause of action were Todd Sorensen, M.D., William Seifert, M.D., Terry Haney, M.D., William Packard, M.D., W. Scott Carpenter, M.D., Vince Bjorling, M.D., and Armando Mangana, M.D. Scottsbluff Internal Medicine Group is a named party in cases 38267, 38268, and 38279. Dr. Mangana and Dr. Packard are named parties in case 38268 filed in this court. The address of these physicians is Two West 42nd Ave., Scottsbluff, NE 69361.

10. Defendant, Mark E. Novotny, is an attorney associated with William M. Lamson, Jr. in the Lamson, Dugan & Murray law firm with offices at 10306 Regency Parkway Dr., Omaha, NE. Mark Novotny was or is an attorney for W. Scott Carpenter, M.D., Scottsbluff Internal Medicine Group, Armando Mangana, M.D., William Packard, M.D., Terry Mark Himes, D.O., and Larry O'Holleran, M.D. Mark Novotny was never made a party to cases 38267, 38268, 38269, 38270, 38271, 38279 or 44590.

11. Defendant, Robert P. Chaloupka, is or was an attorney for Regional West Medical Center and/or its employees at all times in reference to this cause of action. His office is at 1904 First St., P.O. Box 1204, Scottsbluff, NE. Robert Chaloupka was never made a party to cases 38267, 38268, 38269, 38270, 38271, 38279 or 44590.

12. Defendant, James A. Snowden, is an attorney for Regional West Medical Center and/or its employees at all times in reference to this cause of action. His office is at Suite 830, NBC Center, 1248 "O" St., Lincoln, NE. James A. Snowden was never made a party to cases 38267, 38268, 38269, 38270, 38271, 38279 or 44590.

13. Defendant, Armando J. Mangana, M.D., is a physician associated with Scottsbluff Internal Medicine Group and is a named defendant in case 38268. His address is Two West 42nd Ave., Scottsbluff, NE 69361.

14. Defendant, William M. Packard, M.D., is a physician associated with Scottsbluff Internal Medicine Group and is a named defendant in case 38268. His address is Two West 42nd Ave., Scottsbluff, NE 69361.

15. Defendant, Terry Mark Himes, D.O., is a neurologist practicing in Scottsbluff, NE. He is a named party in cases 38268 and 38271 filed in this court. He is not associated with Scottsbluff Internal Medicine Group. His address is Two West 42nd Ave., Scottsbluff, NE 69361.

16. Defendant, Larry O'Holleran, M.D., is a general surgeon practicing in Scottsbluff, NE. He is a named party in case 38271 filed in this court. He is not associated with Scottsbluff Internal Medicine Group. His office is at Two West 42nd Ave., Scottsbluff, NE 69361. Defendant, Larry O'Holleran, practices in a partnership known as Forney Westerbuhr Surgical Associates, P.C. which includes Larry O'Holleran, M.D., Glen A. Forney, M.D. and Lloyd M. Westerbuhr, M.D.

17. This is a civil action brought pursuant to Title 42 U.S.C.S. 1983, action for deceit and collusion under common law, and an action for declaratory judgment brought pursuant to Neb. Rev. Stat. section 25-21,149 (Reissue 1995) for the purpose of declaring the rights, status, and other legal relations whether or not further relief is or can be claimed in regard to cases 38267, 38268, 38269, 38270, 38271, and 38279. Jurisdiction is based on Neb. Rev. Stat. section 24-302 (Reissue 1995). This Court is the court of record in cases 38267, 38268, 38269, 38270, 38271, and 38279 filed in this Court by the personal representative of Harriet I. Waite, deceased. In case 38267, the named parties are W. Scott Carpenter, M.D., Regional West Medical Center, and Scottsbluff Internal Medicine Group. In case 38268, the named parties are W. Scott Carpenter, M.D., Armando J. Mangana, M.D., William M. Packard, M.D., Terry Mark Himes, D.O., and Regional West Medical Center. In case 38269, the named parties are W. Scott Carpenter, M.D., and Regional West Medical Center. In case 38270, the named parties are Regional West Medical Center and Nancy Adams. In case 38271, the named parties are W. Scott Carpenter, M.D., Terry Mark Himes, D.O., Larry O'Holleran, M.D., Jana Haick, R.N., Donna Rusen, R.N., Judy Bowlin, L.P.N., and Regional West Medical Center. In case 38279, the named parties are W. Scott Carpenter, M.D. and

Scottsbluff Internal Medicine Group. This action is also brought pursuant to Neb. Rev. Stat. sections 25-311, 25-320, 25-701, and 25-705. There has been no previous judgment in an action in which the plaintiff named Anne Hippe, Mark Novotny, Robert Chaloupka, James Snowden, and all the defendants named in cases 38267, 38268, 38269, 38270, 38271, and 38279 as parties to a declaratory judgment action. There has been no previous valid judgment in cases 38267, 38268, 38269, 38270, 38271, and 39279 in compliance with the U.S. Constitution.

FIRST CAUSE OF ACTION

1. Plaintiff incorporates herein the allegations in paragraphs 1 to 17 above.

2. On or about April 8, 1991, the plaintiff as personal representative of the estate of Harriet I. Waite filed cases 38267, 38268, 38269, 38270, 38271, and 38279 in the Scotts Bluff County District Court. Regional West Medical Center was named as a party in cases 38267, 38268, 38269, 38270, and 38271. Anne Hippe was an officer or employee or agent for Regional West Medical Center at all times in reference to this cause of action. The plaintiff did not know of Anne Hippe's pecuniary interest in these cases until the fall of 1993. Robert O. Hippe and Anne Hippe were married to each other and lived together at the same residence at all times in reference to this cause of action and at that residence on September 3, 1991, October 30, 1991, October 29, 1993, August 29, 1996, October 3, 1996, and July 31, 1997 conspired together to deprive this plaintiff of his U.S. constitutional rights. In 1989, Anne Hippe was an instructor in the School of Practical Nursing at Regional West Medical Center and supervised a nursing student in the negligent care of decedent Harriet I. Waite. In 1991 prior to September 5, Anne Hippe became the chairsperson of the

West Medical Center and at Western Nebraska Community College. A hearing was held on September 3, 1991 before Judges Robert O. Hippe and Alfred J. Kortum. On September 3, 1991 Alfred J. Kortum discussed the merits of cases 38267, 38268, 38269, 38271, and 38279 with disqualified Judge Robert O. Hippe. On September 3, 1991, Robert O. Hippe and Anne Hippe engaged in a joint action with state official Alfred J. Kortum to deprive personal representative Glenn R. Waite from an impartial hearing as guaranteed by the U.S. Constitution in cases 38267, 38268, 38269, 38271, and 38279. On October 30, 1991, Anne Hippe engaged in a joint action with Judge Robert O. Hippe and as a result Robert O. Hippe signed an order which deprived personal representative Glenn R. Waite from an impartial hearing in case 38270. On October 29, 1993, Anne Hippe engaged in a joint action with state official Robert O. Hippe to deprive personal representative Glenn R. Waite from an impartial hearing in cases 38270 and 38279 and on December 9, 1993, in furtherance of their joint action, Robert O. Hippe signed an order which deprived Glenn R. Waite of his U.S. Constitutional rights. On January 7, 1994, Alfred J. Kortum outside the courtroom discussed ex parte the merits of Anne Hippe's employment with Robert O. Hippe. In furtherance of their ex parte discussion, Alfred J. Kortum acted, under color of Neb. Rev. Stat. sections 24-734 and 24-739, to deprive personal representative Glenn R. Waite of his U.S. Constitutional right to an impartial decision maker on April 11, 1994. On March 7, 1994, the plaintiff had filed a motion for new trial in cases 38267, 38268, and 38271 which raised the fact issue of whether Judge Kortum was biased on September 3, 1991 when he engaged jointly, under color of state law, to deprive personal representative Glenn R. Waite of his U.S. Constitutional rights. That motion requested a judge other than Judge Kortum or Judge Hippe to decide the

motion for new trial. On March 10, 1994, a motion for change of judge or venue was filed in cases 38267, 38268, and 38271 and that motion requested a judge other than Judges Kortum and Hippe to decide the issue of Judge Hippe's pecuniary interest. There has never been any order which has disposed of this motion. Attached as Exhibit C is the Clerk's certification. On August 29, 1996, Robert O. Hippe and Anne Hippe acted together to deprive personal representative Glenn R. Waite from his U.S. Constitutional right to a fair trial and in furtherance of their joint action, Robert O. Hippe had a conference or communication with Paul D. Empson in which they made plans to deprive personal representative Glenn R. Waite from his U.S. Constitutional rights of a prior notice and the opportunity for an impartial hearing on his third amended petition in case 38269. On October 3, 1996, in furtherance of his prior joint action with Robert O. Hippe and Anne Hippe, Paul D. Empson acted sua sponte and entered an order which deprived personal representative Glenn R. Waite of a prior notice and the prior opportunity for an impartial hearing in case 38269 as guaranteed by the U.S. Constitution. On July 31, 1997, Robert O. Hippe in furtherance of his joint action with Anne Hippe and Paul D. Empson to deprive personal representative Glenn R. Waite of his U.S. Constitutional rights entered an order in case 38269 which imposed costs upon Glenn R. Waite without any prior notice. Anne Hippe and Robert O. Hippe acted on September 3, 1991, October 30, 1991, October 29, 1993, August 29, 1996, October 3, 1996, and July 31, 1997 under the color of Neb. Rev. Stat. sections 24-734 and 24-739 to deprive personal representative Glenn R. Waite of his rights to an impartial hearing in cases 38267, 38268, 38269, 38270, 38271, and 38279 as guaranteed by the 14th Amendment to the U.S. Constitution.

3. On December 6, 1996, case 44590 was filed by Glenn R. Waite, individually. On April 30, 1997, defendant Alan G. Gless in case 44590 acted sua sponte, under color of Neb. Rev. Stat. sections 24-734 and 24-739, to deprive Glenn R. Waite of his U.S. Constitutional right to a prior notice and a prior opportunity for a hearing on the propriety of taking judicial notice of adjudicative facts and his right to a hearing before dismissal. No hearings were ever held in case 44590.

4. As a result of the actions of the defendants as alleged in pararaphs 2 and 3 above, the plaintiff was dam[illegible]ed because he was not allowed his liberty interest to an impar[illegible]al hearing on the dates set forth above.

SECOND CAUSE OF ACTION

1. Plaintiff incorporates herein the allegations in paragraphs 1 to 17 of his jurisdictional statement and paragraphs 1 to 4 of his first cause of action. This is a declaratory judgment action pursuant to Neb. Rev. Stat. section 25-21,149 (Reissue 1995).

2. On April 8, 1991, cases 38267, 38268, 38269, 38270, and 38271 were filed in this court. On April 11, 1991, case 38279 was filed in this court. W. Scott Carpenter, M.D., ScottsBluff Internal Medicine Group, Regional West Medical Center and certain employees, Armando J. Mangana, M.D., William M. Packard, M.D., Terry Mark Himes, D.O., and Larry O'Holleran were named as defendants in one or more of these cases. All the cases alleged negligence in the care of decedent Harriet I. Waite by the defendants. Case 38269 alleged two causes of action: (1) a wrongful death action and (2) a fraud perpetrated upon Glenn R. Waite by the defendants. The defendants in cases 38267, 38268, 38269, 38270, 38271, and 38279 never at any time filed an answer which denied the factual allegations of negligence and fraud alleged by the plaintiff in these cases. In July 1991, Glenn R.

Waite answered the interrogatories of Regional West Medical Center perpetrated upon Glenn R. Waite in all the cases. Interrogatory no. 2 in cases 38267, 38268, and 38279 requested if decedent had children, set forth the full name, address and age of each child. Interrogatory no. 16 in cases 38269 and 38271 requested as to each item of expense, pecuniary loss, or special damages for which you seek recovery in this lawsuit, set forth: a. the nature and description; and b. the amount. Interrogatory no. 22 in cases 38269 and 38271 requested, inter alia, for each person surviving decedent and claiming damages, set forth: a. the survivor's name and present address. The answer of Glenn R. Waite to interrogatories 2 and 22 stated under oath that Glenn R. Waite was the only natural son of Harriet I. Waite and the person claiming damages as next of kin in cases 38267, 38268, 38269, 38270, 38271, and 38279. The answer to Interrogatory 16 stated that Glenn R. Waite was claiming damages of $992.13 and $735.90 and $719.86 in regard to an emergency trip to Nebraska in April 1991 and listed funeral expenses paid by Glenn R. Waite. In July and August 1991, the defendants in cases 38267, 38268, 38270, 38269, 38271, and 38279 filed motions which raised the issue of whether personal representative Glenn R. Waite was engaged in the unauthorized practice of law and whether the defendants had a right to have the pleadings signed by Glenn R. Waite to be held a nullity and whether the defendants had a right to a judgment of dismissal and a right to enforce sanctions against Glenn R. Waite for engaging in the unauthorized practice of law. On September 3, 1991, a hearing was held only in cases 38267, 38268, 38269, 38271, and 38279 and defendant Kortum asked the defendants who were being represented by defendants Mark Novotny and Robert Chaloupka why this Court was being kept in the dark as to who the heirs of Harriet I. Waite are. Defendant attorney Mark E. Novotny

then stated that he understood the Court's concern and to date, we have not received evidence back from plaintiff regarding who the heirs are. I, the plaintiff, was present at the September 3, 1991 hearing and knew that I had mailed, on or about July 1, 1991, a copy of the answers to interrogatories to William M. Lamson, Jr., 10306 Regency Parkway Dr., Omaha, NE 68114; Robert P. Chaloupka, 1904 First Ave., Scottsbluff, NE 69363; and James A. Snowden, 1000 NBC Center, Lincoln, NE 68508. But, at the time of the hearing on September 3, 1991, I, the plaintiff, did not know whether the post office had delivered or the attorneys had actually received the answers to these interrogatories. I have recently found out that the defendant attorneys did actually receive a copy of the answers to these interrogatories prior to the September 3, 1991 hearing. It is now known that the defendant attorneys practiced deceit and collusion upon the court and upon the personal representative at the September 3, 1991 hearing. A true copy of the transcript of proceedings held September 3, 1991 is attached hereto as Exhibit D. On September 5, 1991, defendants Robert O. Hippe and Alfred J. Kortum granted the defendants' motions for summary judgment based on the fact that the defendants had not received evidence back from plaintiff regarding who the heirs are. In the fall of 1993 after learning for the first time that defendant Anne Hippe had a pecuniary interest in all the cases dismissed on September 5, 1991, I, the plaintiff, filed motions to vacate the September 5, 1991 summary judgment of dismissal based on the fact that Anne Hippe was married to Robert O. Hippe and she was an instructor or chairsperson of the school of nursing at Regional West Medical Center and at least one nursing student negligently treated Harriet I. Waite. However, it was not known at the time these motions were filed that defendants Anne Hippe, Alfred J. Kortum, and Robert O. Hippe had had ex parte communications regarding

Anne Hippe's employment with Regional West Medical Center. On March 1, 1994, defendant Alfred J. Kortum found that all matters raised in the various motions of the plaintiff could have or should have been raised in the appeal taken to the Nebraska Court of Appeals. On March 7, 1994, I, the plaintiff, filed a motion for new trial or a motion to vacate the March 1, 1994 order. That motion alleged that on September 3, 1991, defendant Alfred J. Kortum knew of defendant Robert O. Hippe's disqualification or Anne Hippe's pecuniary interest and in order to prove these facts, it would be necessary to call defendant Alfred J. Kortum as a witness. That motion requested a judge other than Judge Hippe or Judge Kortum to decide the fact questions. On March 10, 1994, I, the plaintiff, filed a motion for change of judge or venue alleging that Anne Hippe was an employee of Regional West Medical Center on September 3, 1991, that on September 3, 1991, defendant Alfred J. Kortum knew of defendant Robert O. Hippe's or defendant Anne Hippe's pecuniary interest and knowingly discussed the merits of the case with a disqualified judge. There is absolutely no order disposing of plaintiff's motion for change of judge or venue. In support of this fact, plaintiff attaches Exhibit C.

3. Case 38270 was filed on April 8, 1991 by personal representative Glenn R. Waite and the defendants were Regional West Medical Center and Nancy Adams, an employee of Regional West Medical Center. In June 1991, Regional West Medical Center's special appearance was sustained. In July 1991, Regional West Medical Center filed a motion claiming that personal representative Glenn R. Waite was engaged in the unauthorized practice of law and that the pleadings filed by Glenn R. Waite should be held a nullity and the case dismissed. But, this motion was not heard on September 3, 1991 along with the other cases. There has never been a hearing on the merits of this motion in case

38270. On October 28, 1991, attorney James A. Snowden and Robert O. Hippe met together secretly without any prior notice to Glenn R. Waite and agreed together to dismiss the case on the basis that no legal defendant had been named and there was another suit on file with the same allegations. In the fall of 1993, a motion to vacate the order of dismissal on October 30, 1991 was filed by the plaintiff and on December 9, 1993, defendant Hippe overruled the motion. A motion for new trial was then filed requesting that the December 9, 1993 order be vacated and that the motion be heard by a judge other than Judge Hippe or Judge Kortum. On March 1, 1994, defendant Kortum overruled plaintiff's motion for new trial.

4. The actual controversy capable of present judicial determination between the parties in this second cause of action is as follows:

a. Plaintiff claims that this Court has the inherent authority under common law to vacate any void judgments or void orders and clear its court files of any illegal entries at any time and/or the Court can exercise its equitable powers and issue an order which restrains the defendants from enforcing a void judgment or order. In cases 38267, 38268, 38269, 38271, and 38279, the summary judgments of dismissal on September 5, 1991 are void under the 14th Amendment to the U.S. Constitution because the judgments were issued from a proceeding which violated plaintiff's right to due process. In case 38270, the October 30, 1991 dismissal order is void under the 14th Amendment to the U.S. Constitution because the order was issued from a proceeding which violated plaintiff's right to due process. Plaintiff also claims that this Court can issue an order which restrains the defendants from enforcing a judgment which the defendants obtained by practicing deceit and collusion on the court and on the plaintiff at the September 3, 1991 hearing.

b. The Defendants claim that the plaintiff has no legal or

equitable rights to have this Court vacate void judgments or void orders and/or issue an order which restrains the defendants from enforcing a void or fraudulent judgment.

5. No previous action has been filed which determined this issue in which all above named persons were parties.

THIRD CAUSE OF ACTION

1. Plaintiff incorporates herein the allegations in paragraphs 1 to 17 of his jurisdictional statement.

2. In cases 38267, 38268, 38269, 38270, and 38271 filed in this Court, Regional West Medical Center and/or its employees through James A. Snowden filed a motion to strike and to dismiss which alleged that Glenn R. Waite was engaged in the unauthorized practice of law in violation of Neb. Rev. Stat. section 7-101. That motion sought a penalty in the form of sanctions dismissing his lawsuits and forever barring him from suing the defendants and sanctions causing a forfeiture of his rights as personal representative, a forfeiture of his rights as sole heir of the estate of Harriet I. Waite, deceased, and a forfeiture of his individual rights in regard to the fraud action brought in case 38269. In August 1991, Defendant W. Scott Carpenter, M.D. through Mark Novotny in cases 38267, 38268, 38269, 38271, and 38279 joined in the motion brought by Regional West Medical Center dated July 17, 1991. Neither the State of Nebraska, the County of Scotts Bluff, nor any judge or employee in his official capacity was ever made a party to cases 38267, 38268, 38271, A-91-923, A-91-924, A-91-925, A-94-444, A-94-445, A-94-498, 38269, 38270, 38279, 44590. There has never been any notice to Glenn R. Waite by the State of Nebraska, the County of Scotts Bluff, or any judge in his official capacity or any state employee that the State of Nebraska was a party acting pursuant to Neb. Rev. Stat. section 7-101 or a party acting under the judge's inherent

authority to enforce criminal sanctions against Glenn R. Waite. No contempt of court charges have ever been brought by the State of Nebraska against Glenn R. Waite. In case 98-2816 filed in the U.S. Court of Appeals for the 8th Circuit in which Judge Hippe, Judge Empson, Sara Olsen, Ann Rosenberry, and Judge James Macken were made parties in their official capacities was dismissed without prejudice on July 19, 1999. In that lawsuit, Attorney General Don Stenberg maintained the position that Judge Hippe, Judge Empson, County Attorney Sara Olsen, Clerk Ann Rosenberry, and Judge James Macken in their official capacities and/or the State of Nebraska had not yet imposed any sanctions upon Glenn R. Waite, individually or as personal representative, pursuant to Neb. Rev. Stat. sections 24-318 and 7-101 and therefore there is no actual controversy between the State of Nebraska and Glenn R. Waite regarding any alleged unauthorized practice of law and the actual controversy is between Glenn R. Waite and the original defendants or their attorneys in cases 38267, 38268, 38269, 38270, 38271, and 38279. The U.S. Court of Appeals dismissed the appeal without prejudice based on the fact that the State of Nebraska and/or its officials have not yet imposed any criminal or civil sanctions upon Glenn R. Waite. In cases 38267, 38268, and 38271 there are amended petitions filed by Glenn R. Waite, individually, which the court has not yet disposed of. In August 1999, a motion for default judgment was filed in cases 38267, 38268, and 38271 by Glenn R. Waite, individually, a legally distinct person from the personal representative. Subsequently, the defendants and their filed a resistance pleading requesting the Court to deny the motions for default judgment and to enforce the September 5, 1991 dismissal order against Glenn R. Waite, individually, as a sanction for allegedly engaging in the unauthorized practice of law. There is no order contained in the court file which

disposes of the motions for default judgment. See Exhibit C.

3. The actual controversy capable of present judicial determination between the parties in this third cause of action is as follows:

a. Plaintiff, individually, claims that, pursuant to Neb.Rev. Stat. sections 7-101 (Reissue 1997) and 25-301 (Reissue 1995), the named defendants in cases 38267, 38268, 38269, 38270, 38271, and 38279 and their attorneys as private citizens and informers in their own name without joining the State of Nebraska have no standing to enforce sanctions or penalties against the plaintiff in the form of enforcing the September 5, 1991 order of dismissal in cases 38267, 38268, 38269, 38271, and 38279 to cause a forfeiture of his rights as personal representative, a forfeiture of his rights as sole heir of the estate of Harriet I. Waite, deceased, and a forfeiture of his individual rights in regard to the fraud action brought in case 38269.

b. All the defendants named in cases 38267, 38268, 38269, 38270, 38271, and 38279 and attorneys Mark Novotny, Robert Chaloupka, and James Snowden claim that they indeed have standing pursuant to Neb. Rev. Stat. sections 7-101 and 25-301 to enforce criminal sanctions or criminal penalties against Glenn R. Waite, individually, and standing to enforce the September 5, 1991 order of dismissal on September 5, 1991 in cases 38267, 38268, 38269, 38271, and 38279 as a sanction against the plaintiff for allegedly engaging in the unauthorized practice of law.

4. No previous action has been filed which determined this issue in which all above named persons were parties.

FOURTH CAUSE OF ACTION

1. Plaintiff incorporates herein the allegations in paragraphs 1 to 17 of his jurisdictional statement.

2. In July 1991, defendant, Regional West Medical Center,

by its attorney James A. Snowden filed, in case 38269, a pre-trial motion to dismiss which is not recognized as a pleading in Nebraska. There was never any notice and motion filed requesting that this motion be converted to a motion for summary judgment and there is absolutely no order contained in the court file allowing the defendant to convert this motion into a motion for summary judgment. A copy of the Affidavit of Ann Rosenberry dated November 27, 1996 is attached hereto as Exhibit E. On July 15, 1996, plaintiff filed, in case 38269, a third amended petition which alleged that there was no order disposing of the defendants' pre-trial motion to dismiss and the September 5, 1991 order signed by Judge Hippe sustaining Dr. Carpenter's motion for summary judgment is void under the 14th Amendment to the U.S. Constitution because Judge Hippe's wife supervised a nursing student in the negligent care of Harriet Waite. A copy of this petition was served upon defendants W. Scott Carpenter, M.D., and on Regional West Medical Center by certified mail. Copies of the return receipts are attached as Exhibit F. The alleged cause of action for fraud in the original complaint and in the third amended petition in case 38269 is Glenn R. Waite's own personal cause of action and is only alleged in case 38269. No answer or other response was filed in case 38269 by the defendants within thirty days of being served with the third amended petition in case 38269 as required by Nebraska law and no answer or other response to the third amended petition by the defendants has ever been filed in case 38269. On October 3, 1996, defendant Empson, sua sponte, without a prior notice and the opportunity for a hearing as required by the 14th Amendment, signed an order dismissing the third amended petition. A copy is attached as Exhibit G.

3. The actual controversy capable of present judicial determination between the parties in this fourth cause of

action is as follows:

Plaintiff, Glenn R. Waite, individually and as personal representative, claims that pursuant to the 14th Amendment to the U.S. Constitution, Neb. Rev. Stat. section 7-101 (Reissue 1997) as applied to him in case 38269 by the defendants is repugnant to and violates the U. S. Constitution because it does not provide for Due Process and Equal Protection of the law at all stages of the proceedings. Plaintiff claims that the October 3, 1996 order signed by defendant Empson is void under the 14th Amendment because its was issued from a proceeding which violated the plaintiff's due process.

All the defendants named in case 38269 and their attorneys action claim that Neb. Rev. Stat. section 7-101 (Reissue 1997) is not repugnant to and does not violate the 14th Amendment to the U.S. Constitution as applied to Glenn R. Waite in case 38269 and claim that the September 5, 1991, October 3, 1996, and July 31, 1997 orders are not void.

4. No previous action has been filed which determined this issue in which all above named persons were parties.

FIFTH CAUSE OF ACTION

1. Plaintiff incorporates herein the allegations in paragraphs 1 to 17 of his jurisdictional statement.

2. On October 25, 1996, defendant Paul Empson signed an order in case 38269 which stated that if Glenn R. Waite filed pro se any further pleadings in this case or a companion case, the clerk shall notify the county attorney and then the county attorney is directed to make a complete investigation. On November 1, 1996, plaintiff filed, in case 38269, a timely notice of appeal to the Nebraska Court of Appeals and/or Nebraska Supreme Court and paid the required fees and bond. On May 23, 1997, Chief Judge John Irwin or the Nebraska Court of Appeals dismissed the appeal for lack of

jurisdiction on the application of Appellees Dr. Carpenter and Regional West Medical Center and failed to resolve the issue on its merits of whether Glenn R. Waite either as personal representative or individually had standing to file any further pleadings in case 38269 and failed to resolve the issue on its merits of whether plaintiff's rights under Article I, section 24, of the Nebraska State Constitution and under the Due Process and Equal Protection Clauses of the U.S. Constitution had been violated in case 38269. There was no full and fair opportunity to litigate the plaintiff's U.S. Constitutional claims on their merits in case A-96-1118 since the appeal was dismissed for lack of jurisdiction.

3. The actual controversy capable of present judicial determination between the parties in this fifth cause of action is as follows:

Plaintiff, individually and as personal representative, claims that pursuant to the 14th Amendment to the U.S. Constitution, Neb. Rev. Stat. section 25-1912 (Reissue 1995) as applied to him in case 38269 (A-96-1118) by the defendants is repugnant to and violates the United States Constitution and the Nebraska Constitution because it does not provide for Due Process and Equal Protection of the law at all stages of the proceedings including the court of last resort and there was no fair and full opportunity to litigate his federal claims in case 38269.

All defendants named in case 38269 and their attorneys claim that Neb. Rev. Stat. section 25-1912 (Reissue 1995) is not repugnant to and does not violate the 14th Amendment to the U.S. Constitution or the Nebraska Constitution as applied to the plaintiff.

4. No previous action has been filed which determined this issue in which all above named persons were parties.

SIXTH CAUSE OF ACTION

1. Plaintiff incorporates herein the allegations in paragraphs 1 to 17 of his jurisdictional statement.

2. On October 3, 1996, defendant Judge Paul Empson in case 38269 took sua sponte judicial notice of facts contained in the court files in cases 38268 and 38271 without prior notice and without prior opportunity for a hearing to the plaintiff and on May 23, 1997 the Nebraska Court of Appeals dismissed the timely filed appeal for lack of jurisdiction. Such act or acts are capable of repetition yet evading review on the merits of this issue by a higher court.

3. The actual controversy capable of present judicial determination between the parties in this sixth cause of action is as follows:

Plaintiff, individually, claims that, pursuant to the 14th Amendment to the U.S. Constitution, Neb. Rev. Stat. section 27-201 (Reissue 1995) on its face and as applied to him in case 38269 by the defendants is repugnant to and violates the United States Constitution because it does not provide for the prior notice and for the prior opportunity for a hearing when a State Judge takes judicial notice of adjudicative facts.

All defendants named in this action claim that Neb. Rev. Stat. section 27-201 (Reissue 1995) is not repugnant to and does not violate the 14th Amendment to the U.S. Constitution on its face or as applied to the plaintiff.

4. No previous action has been filed which determined this issue in which all above named persons were parties.

WHEREFORE, Plaintiff, Glenn R. Waite individually and as personal representative, prays for a judgment in his favor and against the defendants as follows:

1. On the first cause of action, a judgment which enjoins the defendants from enforcing the September 5, 1991 judgment in cases 38267, 38268, 38269, 38271, and 38279. Plaintiff further requests the court to enter a judgment which

enjoins the defendants from enforcing the dismissal order dated October 30, 1991 in case 38270. Plaintiff also requests the court to enter a judgment which enjoins the defendants from enforcing the April 30, 1997 order signed by defendant Alan G. Gless in case 44590. Plaintiff further requests a judgment against the defendants named in the first cause of action for the amount of damages he could have obtained in cases 38267, 38268, 38269, 38270, 38271, and 38279 had the defendants not committed the acts alleged. Plaintiff also requests a judgment for costs of this action, the costs of the hearings held September 3, 1991 and October 29, 1993, the costs imposed upon him in cases 38270 and 38279 on December 7, 1994, and the costs imposed upon him in cases 38267, 38268, and 38271 on August 24, 1995 and the costs imposed upon him by Judge Hippe's order dated July 31, 1997.

2. On the second cause of action, a declaratory judgment which states that (1) this Court has the inherent authority under common law to vacate any void judgments or void orders and clear its court files of any illegal entries at any time and/or the Court can exercise its equitable powers and issue an order which restrains the defendants from enforcing a void or fraudulent judgment, (2) in cases 38267, 38268, 38269, 38271, and 38279, the summary judgments of dismissal on September 5, 1991 are void under the 14th Amendment to the U.S. Constitution because the judgments were issued from a proceeding which violated plaintiff's right to due process, (3) in case 38270, the October 30, 1991 dismissal order is void under the 14th Amendment to the U.S. Constitution because the order was issued from a proceeding which violated plaintiff's right to due process, and (4) an order which restrains the defendants from enforcing the September 5, 1991 judgments in cases 38267, 38268, 38269, 38271, and 38279 which the defendants obtained by

practicing deceit and collusion on the court and on the plaintiff at the September 3, 1991 hearing.

3. On the third cause of action, a declaratory judgment which states that pursuant to Neb. Rev. Stat. sections 7-101 (Reissue 1997) and 25-301 (Reissue 1995), the named defendants in cases 38267, 38268, 38269, 38270, 38271, and 38279 and their attorneys as private citizens and informers in their own name without joining the State of Nebraska have no standing to enforce sanctions or penalties against the plaintiff in the form of enforcing the September 5, 1991 order of dismissal in cases 38267, 38268, 38269, 38271, and 38279 to cause a forfeiture of plaintiff's rights as personal representative, a forfeiture of plaintiff's rights as sole heir of the estate of Harriet I. Waite, deceased, and a forfeiture of plaintiff's individual rights in regard to the fraud action brought in case 38269.

4. On the fourth cause of action, a declaratory judgment which states that (1) pursuant to the 14th Amendment to the U.S. Constitution, Neb. Rev. Stat. section 7-101 (Reissue 1997) as applied to him in case 38269 by the defendants is repugnant to and violates the U. S. Constitution because it does not provide for Due Process and Equal Protection of the law at all stages of the proceedings, and (2) that the October 3, 1996 order signed by defendant Empson is void under the 14th Amendment because its was issued from a proceeding which violated the plaintiff's due process.

5. On the fifth cause of action, a declaratory judgment which states that pursuant to the 14th Amendment to the U.S. Constitution, Neb. Rev. Stat. section 25-1912 (Reissue 1995) as applied to the plaintiff in case 38269 (A-96-1118) by the defendants is repugnant to and violates the United States Constitution and the Nebraska Constitution because it does not provide for Due Process and Equal Protection of the law at all stages of the proceedings including the court of last

resort and there was no fair and full opportunity to litigate the plaintiff's federal claims in case 38269.

6. On the sixth cause of action, a declaratory judgment which states pursuant to the 14th Amendment to the U.S. Constitution, Neb. Rev. Stat. section 27-201 (Reissue 1995) on its face and as applied to the plaintiff in case 38269 by the defendants is repugnant to and violates the United States Constitution because it does not provide for the prior notice ndfor the prior opportunity for a hearing when a State Judge takes judicial notice of adjudicative facts.

7. Plaintiff prays that a jury will hear all the facts going to the merits of this case.

8. Plaintiff requests that this court will grant any further relief pursuant to Neb. Rev. Stat. section 25-21,149 et. seq. (Reissue 1995) including the right to be represented by an attorney if this court determines such representation is necessary.

9. Plaintiff, pursuant to Neb. Rev. Stat. sections 25-323 and 25-21,159 (1995), requests this court to join any new persons it deems necessary parties prior to judgment.

Glenn R. Waite, individually
and as personal representative,
Plaintiff,
1591 S. Dandelion St., Apt. 7
Pahrump, NV 89048
775-751-8592

IN THE SUPREME COURT FOR THE STATE OF NEBRASKA

GLENN R. WAITE, Plaintiff, vs. ANNE HIPPE, ROBERT O. HIPPE, PAUL D. EMPSON, ALFRED J. KORTUM, ALAN G. GLESS, W. SCOTT CARPENTER, M.D., REGIONAL WEST MEDICAL MEDICAL CENTER, SCOTTS BLUFF INTERNAL MEDICINE GROUP, MARK NOVOTNY, ROBERT P. CHALOUPKA, JAMES A. SNOWDEN, ARMANDO J. MANGANA, M.D., WILLIAM M. PACKARD, M.D., TERRY MARK HIOMES, D.O., and LARRY O'HOLLERAN, M.D., Defendants.	)	CASE NO. CI99-590 DEMURRER TO THE FOURTH AMENDED PETITION

COMES NOW, the Defendant, Anne Hippe, and demurs to the Fourth Amended Petition of the Plaintiff for the following reasons:

1. This Court has no jurisdiction over Anne Hippe or the subject matter of this action.

2. Plaintiff lacks legal capacity to sue Anne Hippe.

3. The Fourth Amended Petition does not state facts sufficient to state a cause of action.

4. Several causes of action are improperly joined.

5. Any purported controversy between Plaintiff and Anne Hippe is barred by applicable statute of limitations.

6. That any purported controversy between Plaintiff

and all Defendants have been or could have been raised in other proceedings or have already been decided and are now barred by principles of issue preclusion or res judicata.

7. That any claim against Anne Hippe challenging constitutionality of the statute is barred.

8. The prior court's decision in Case Nos. 38267, 38268, 38269, 38270, 38271, 38279, 44590 docketed in the District Court of Scotts Bluff County, Nebraska, are final and Plaintiff cannot attempt to resurrect final orders by means of collateral attack.

9. Plaintiff, Glenn R. Waite, as personal representative, is engaging in the unauthorized practice of law. The order of complete settlement and distribution attached to Plaintiff's petition signed by Charles Plantz, County Judge, establishes that Peter A. Waite, Doris R. Butler, and Beverly E. Sipple have renounced all interest in the estate assets, which results in interest of Beverly E. Sipple being vested in the three daughters of Beverly E. Sipple, to-wit: Wanda Sipple-Hall, Wendy Sipple, and DaLinda Sipple; and the interests of Doris R. Butler being vested in her two daughters, Michelle Warzeecha and Sharon Kadlec. The actions of the Plaintiff, a non-lawyer, bringing this suit as personal representative is in violation of 7-101 et. seq.

WHEREFORE, the Defendant, Anne Hippe, prays that her demurrer be sustained and that Plaintiff's Fourth Amended Petition be dismissed against the Defendant Anne Hippe, and that Plaintiff not be permitted to file any further pleadings since the foregoing defects cannot be cured by further pleading.

DATED this 7 day of March 2000.

ANNE HIPPE, Defendant

By _____

Richard A. Douglas, NBSA#11067

ASSIGNMENT OF ERRORS (Case A-00-782)

(1) The District Court erred in sustaining the demurrers of Anne Hippe, W. Scott Carpenter, Scotts Bluff Internal Medicine Group, Mark Novotny, Armando Mangana, William Packard, Terry Himes, and Larry O'Holleran on the basis that the plaintiff has no legal capacity to sue.
(2) The District Court erred in sustaining the demurrer of defendants R. Hippe, Empson, Kortum, and Gless on the claim that there is a defect of parties plaintiff and erred in not granting leave to file an amended petition.
(3) The District Court erred in sustaining the demurrers of all the defendants on the claim that the fourth amended petition does not state facts sufficient to constitute a cause of action.
(4) The District Court erred in sustaining the demurrers of defendants Anne Hippe, Robert Hippe, Paul Empson, Alfred Kortum, Alan Gless, W. Scott Carpenter, Scottsbluff Internal Medicine Group, Mark Novotny, Armando Mangana, William Packard, Terry Himes, and Larry O'Holleran on the claim that Res Judicata or Collateral Estoppel bars this action.
(5) The District Court erred in sustaining the demurrer of Anne Hippe on the basis that Glenn R. Waite is presently engaging in the unauthorized practice of law and erred in not treating the demurrer as an answer.
(6) The District Court erred in sustaining the demurrer of the Defendants on the basis that the action is barred by the statute of limitations.
(7) The District Court erred in sustaining the demurrers of Mark Novotny and Robert Chaloupka on the basis that the controversy is barred by privilege.

ASSIGNMENT OF ERRORS (Case S-02-001391)

(1) The District Court erred in finding that the plaintiff's July 2002 motions lack merit in all respects.
(2) The district court erred in denying Waite's claim that Neb. Rev. Stat. sections 25-854 (Reissue 1995), 7-101 (Reissue 1997), 25-1912 (Reissue 1995) and 27-201 (Reissue 1995) as applied to Waite are repugnant to the U.S Constitution.
(3) The district court erred in finding that the named judges as enforcement officers are not proper parties to a 42 USC 1983 action seeking to declare unconstitutional Neb. Rev. Stat. section 7-101 (Reissue 1997).
(4) The District Court erred in determining that the statements made by the defendant attorneys are protected by privilege.
(5) The District Court erred in determining that the action is barred by the applicable statute of limitations.

(On September 3, 1991, in the District Court of Scotts. Bluff County, Nebraska, at Gering, Nebraska, before the HONORABLES ALFRED J. KORTUM and ROBERT 0. HIPPE, JUDGES of said court, and Mr. Alexander Davison appearing on behalf of the plaintiff, and Mr. Robert P. Chaloupka and Mr. Mark Novotny appearing on behalf of the defendants, the following proceedings were had:)

(ARGUMENT)

JUDGE KORTUM: That will close that. Who will be arguing, you'll be – each of you will be arguing this? MR. NOVOTNY: Yes, Your Honor. JUDGE KORTUM: What can you tell us? MR. NOVOTNY: Your Honor, as outlined in my brief, I don't really want to regurgitate the briefs to you, sir, in Nebraska the law is clear that one is not allowed to practice law without a license. In this case Mr. Waite is the duly appointed personal representative of the estate of Harriet Waite and he has brought five actions or actually six actions in this county, one in federal but that's not relevant here. And he has signed the pleadings, he has initiated the pleadings, signed the pleadings, participated in oral argument for motions in the past; he has sent out a number of discovery requests, he being the author and he being the signatore on those documents. The law in Nebraska, as pointed out in our brief, shows that one cannot act in a representative capacity. One is allowed to bring an action in their own name. If Mr. Waite had a cause of action against anybody in this world he could sue against that person in his own name, but as a personal representative he cannot bring a cause of action in a representative capacity and that includes the types of actions here. The statute allows him as a personal representative to bring the action in his own name. And as the court knows, in wrongful death actions, you name the personal representative as the party. There's a difference between bringing the action and going forward on the action. The law

states that any case so brought in a representative capacity as this must be because Mr. Waite is trying to adjudicate the rights of all the heirs of the parties, it must be held as a nullity and it is proper for a motion for summary judgment and it's proper for the court to dismiss that. Most notable in our brief we cite a case from Wisconsin that addressed this specific issue and the court in that case did discuss how a personal representative of all the heirs and even if the personal representative had a private cause of action themselves and sued themselves, that still wouldn't be enough because no matter what that personal representative would do or individual would do in his name, it would affect everyone else. And because everyone else is being affected, all the other heirs are being affected by this cause of action, it is proper without an attorney and such that they must be dismissed or held a nullity. Again, I don't want to regurgitate the entire brief but that's our position in this case. The affidavit of Ted Dillow who's the president of the Nebraska Bar Association shows that Mr. Waite is not an attorney in this state and is not licensed to practice law. The affidavit of Jim Snowden and my affidavit merely point out to the court that things I've mentioned; that Mr. Waite has participated in hearings, Mr. Waite has drafted and filed complaints and drafted and filed discovery documents. Based on the reasons in our brief and the evidence submitted, we would then ask that the court hold that the five lawsuits are nullities and have them dismissed. Thank you. JUDGE KORTUM: Anything to add, Mr. Chaloupka? MR. CHALOUPKA: I really have nothing to add, Your Honor, over the brief's and Mr. Novotny's argument. JUDGE KORTUM: Mr. Davison, Mr. Waite has an affidavit in here, what is the effect of that? MR. DAVISON: Mr. Waite's – Dr. Waite's affidavit just merely states that he is the personal representative of the plaintiff in the cases and I don't know if it goes to the issues presented

by the affidavits of the defendants. In fact, one of the assertions was that he was the personal representative and that affidavit would support that. I would like to make two points for Your Honors to consider. Counsel for the defense has stated that Dr. Waite is acting in the capacity of personal representative and I think there's a significant difference between stating that and actually establishing by admissible and competent evidence that he is, in fact, representing other people. They referred to this case in Wisconsin and I would respectively refer Your Honors to a case, recent in Hawaii where the trustee for a trust was seeking the right to represent the trust and the court asked the trustee to provide them with evidence that this individual was the sole beneficiary under the trust. The trustee did not do so and the court declined to allow him to represent the trust, not being certain that he was the sole beneficiary. In this situation, the affidavit supplied by the defendants do not express any view or contain any information with respect to how Dr. Waite may be situated in the estate which is being represented. Now, I say that that is a crucial part of the evidence which is missing and I'm not saying that there's evidence before this court that that - the reverse is true, just simply stating that it's not there. However, if the court is inclined to accept the idea that there is representation of other here, I would suggest that the Niklaus case, which I think expresses well the view of the Nebraska high court, leaves certain latitude before Your Honors to consider in ruling on the motion for summary judgment and it says that proceedings by persons not entitled to practice law are nullity and suit may be dismissed, but dismissal for proceeding of just cause is a drastic remedy and may not be required in all cases. It certainly – the public policy upon which the unlicensed practice of law is founded would not favor dismissal and total prejudice of the rights of any individual who he may in fact be representing in this

matter. I would point out to Your Honors that even a dismissal without prejudice may very well eliminate any possibility of a claim because of the statute of limitations and would give rise to additional litigation on that point. So I guess what I would propose is that the court in its discretion refrain from dismissing these actions but require Dr. Waite to retain counsel to eliminate these problems and to do so expeditiously. Thank You. JUDGE KORTUM: Anything further? MR. NOVOTNY: Yes, Your Honor. Mr. Davision has mentioned two areas of concern. The first being whether or not it is shown by the evidence that Mr. Waite or Dr. Waite is appearing in a representative capacity in these lawsuits. I think you'll note in the affidavit of Mark Novotny that I indicate that the complaints or petitions or amended complaints and petitions ask for relief for the next of kin of Harriet I. Waite. I would propose that that in and of itself shows that Mr. Waite, Dr. Waite is bringing these actions in a representative capacity. The second point of Mr. Davison's argument is that he would like leave of the court for Mr. Waite to – Dr. Waite to find counsel in these actions. I would first point out to the court that these actions have been on file since April of this year. Secondly, I would point out to the courts to the fact that the case law in Nebraska and particularly the second – the newest case out of the Supreme Court, the the Back Acre case specifically states that these should be dismissed and these type of actions should not be encouraged. And actually, the statute says the court should not encourage or allow these type of actions and the courts have a duty to dismiss these types of actions. And lastly, I'd like to point out to the court again the discussion of the Wisconsin case. That court in that case said there's a duty of the court to protect all these people who are being represented. That duty is so that someone who is not skilled or versed in the law will not prejudice their rights and

because of that, the overwhelming public policy would then be to require the attorney to protect the rights of all these people and if the attorney is not bringing the action, then the suit must be dismissed until an attorney could bring the action himself or herself. For those reasons, again, Your Honors, we would like, we request our summary judgments be granted in all five cases. JUDGE HIPPE: Yes, I had a question for Mr. Novotny and Mr. Chaloupka. If there was only one heir in the estate and that was Glenn Waite, wouldn't it be an awful lot like someone representing themselves. MR. NOVOTNY: As a matter of fact, Your Honors, I could point to an ALR annotation which would indicate in such a circumstance where there's only one heir, that would be appropriate. But if there's even the inkling or suspicion of someone else it's not appropriate and it's very clear in this action that there are other heirs and Mr. Waite brings these actions on behalf – JUDGE KORTUM: Why is this court being kept in the dark to that particularly important fact when the allegations in the complaint, in the petition, although not drafted as it might be, says he attached letters of personal representative, and that's all. It doesn't say anything about who the heirs are. and obviously the law in Nebraska says an action must be brought in the name of the personal representative for the heirs, but why are we being kept in the dark as to how the heirs of Harriet Waite are and if that be the case, it would be a little easier to make – instead of having to work on hypotheticals here. MR. NOVOTNY: I understand the court's concern and to date, we have not received evidence back from plaintiff regarding who the heirs are. that is a matter of discovery, we don't have the discovery yet. However, again, Mr. Waite, Dr. Waite himself proclaims that this is for the next of kin. I would say that under the summary judgment law in Nebraska, once we provide a prima facia showing that summary judgment is proper, it shifts the burden to him to show no

that there are no other heirs and it would be proper for him to bring the action in his name as the sole heir of the estate. JUDGE KORTUM: Okay. that answers my question. Any further questions, Judge Hippe? All right. Well, obviously gentlemen, Judge Hippe and I are going to want to look your briefs over again in light of the affidavits which you have presented today and in light of Mr. Waite's affidavit, and I think these are your motions, I think you should prepare appropriate journals showing appearances, show Mr. Davison's appearance for this motion only and the matter is taken under advisement. We'll get back to you as soon as we have a chance to lay these affidavits against the law.

IN THE COUNTY COURT OF SHERIDAN COUNTY, NEBRASKA

IN THE MATTER	) NO. PR90-78
OF THE ESTATE	) DISTRIBUTION OF
HARRIET I. WAITE,	) ESTATE ASSETS
Deceased	)

COMES NOW, Glenn R. Waite, Personal Representative of the above decedent, and hereby, pursuant to section 30-24,115 of Neb. Rev. Stat. (Reissue 1989), assigns, transfers and releases all interests in the following estate assets:

Any and all property, real or personal, wherever situated; and all causes of action, and any other estates assets, wherever situated,

to himself, Glenn R. Waite, individually, who is the sole heir at law under intestate succession and sole beneficiary of the decedent's estate.

Glenn R. Waite, Personal Representative of the above decedent, being first duly sworn on oath, deposes and states the following based on personal knowledge:

Harriet I. Waite died intestate on April 17, 1989 and her only surviving spouse was Peter A. Waite, and her only surviving issue were Beverly E. Sipple, natural daughter; Doris R. Butler, natural daughter; and Glenn R. Waite, natural son. Peter A. Waite, Beverly E. Sipple, Doris R. Butler, and Glenn R. Waite are the sole and only heirs at law of the above decedent. there are no other natural or legal heirs or interested persons in the estate. The decedent had no debts when she died and there have never been any claims filed against the personal representative.

All heirs, excepting Glenn R. Waite, have filed with the clerk of this court a written instrument of Renunciation of Succession, Affidavit, and Assignment. This leaves Glenn R.

Waite to be the sole surviving heir at law under intestate succession and sole distributee.

Glenn R. Waite
Personal Representative,
1202 W. 28th St.
Cheyenne, WY 82001

STATE OF WYOMING)
) ss.
COUNTY OF LARAMIE)

ACKNOWLEDGMENT:

Before me personally appeared Glenn R. Waite and he acknowledged the above document and signed the execution of the above in my presence.

Notary Public

Dated this the 1st day of November 1995.
FILED November 3, 1995
SHERIDAN COUNTY COURT